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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. July 8, 2014

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
 - Invocation
 - Pledge of Allegiance
 - Approve the minutes of the regular meeting on July 1, 2014
-

AWARDS AND PROCLAMATIONS

- Proclamations:

Kansas All-Star Football Shrine Bowl Day
American Indian Festival Weekend
Drums Across Kansas Day
- Awards:

Citizens' Fire Academy Graduates

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

None

II. CONSENT AGENDAS (ITEMS 1 THROUGH 17)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. **Public Hearing and Tax Exemption Request, C.E. Machine Co., Inc.** (District IV)

RECOMMENDED ACTION: Close the public hearing and approve first reading of the ordinance granting C.E. Machine Co., Inc. a 76.75% tax exemption on the identified real property improvements for a five-year term, plus a 76.75% tax exemption for a second five-year term, subject to City Council review.

2. **Public Hearing and Tax Exemption Request, Walton's, Inc.** (District II)

RECOMMENDED ACTION: Close the public hearing and approve first reading of the ordinance granting Walton's, Inc. a 57.5% tax exemption on the identified real property improvements for a five-year term, plus a 57.5% tax exemption for a second five-year term, subject to City Council review.

3. **Community Event Resolution, Wichita Convoy of Hope.** (District IV)

RECOMMENDED ACTION: Adopt the resolution authorizing a use not allowed by the Wichita-Sedgwick County Unified Zoning Code (UZY) at the Wichita Convoy of Hope on August 2, 2014, and approve the permit for the community event.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

None

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 17)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated July 7, 2014.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2014</u>	<u>(Consumption off Premises)</u>
Kevin Hess	Kwik Shop #716***	2424 West 37th North
Kevin Hess	Kwik Shop #722***	3959 South Hydraulic
Kevin Hess	Kwik Shop #727***	7107 W 37th Street North
Kevin Hess	Kwik Shop #731***	710 West 29th Street North
Kevin Hess	Kwik Shop #748***	2809 East Douglas
Kevin Hess	Kwik Shop #754***	4811 South Seneca
Kevin Hess	Kwik Shop #758***	6327 East 13th North
Kevin Hess	Kwik Shop#772***	2750 South Oliver

***Retailer (Grocery stores, convenience stores, etc.)

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. List of Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.

- a. Community Events - Automobilia's Moonlight Car Show and Street Party. (District VI)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

5. Agreements/Contracts:

- a. Cheney Reservoir Kansas Department of Wildlife, Parks and Tourism Management Agreement.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Contracts and Agreement dated June 2014.

RECOMMENDED ACTION: Receive and file.

7. Funding for Improvements to the Old Lawrence Road Bridge. (District VI)

RECOMMENDED ACTION: Approve the revised budget, adopt the resolution, and authorize all necessary signatures for the acquisition and granting of easements, utility relocation agreements, and all required permits.

8. Sanitary Sewer Extension to Serve Menlo Park Addition. (District VI)

RECOMMENDED ACTION: Approve the project, adopt the resolution, and authorize all necessary signatures for the acquisition and granting of easements, utility relocation agreements, and all required permits.

9. Nuisance Abatement Assessments, Cutting Weeds. (Districts I and II)

RECOMMENDED ACTION: Approve the proposed assessments and place the ordinance on first reading.

10. Nuisance Abatement Assessments, Lot Clean Up. (Districts III, IV and VI)

RECOMMENDED ACTION: Approve the proposed assessment and place the ordinance on first reading.

11. Resolution Authorizing General Obligation Bonds.

RECOMMENDED ACTION: Adopt the resolution and authorize the necessary signatures.

12. Procurement of Buses – Contract for Fixed Route Buses.

RECOMMENDED ACTION: Approve the selection of Gillig LLC as the bus manufacturer and enter into contract for the purchase of buses over the next five years.

13. Purchase of Buses.

RECOMMENDED ACTION: Approve the selection of the Gillig LLC for the purchase of ten buses and to authorize the Purchasing Manager to execute a purchase order.

14. Second Reading Ordinances: (First Read July 1, 2014)

- a. List of Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

15. *ZON2014-00007 – Zone change request from SF-5 Single-family Residential (SF-5) to LC Limited Commercial (LC), generally located west of Seneca Street on the north side of 43rd Street South, 1116 W. 43rd Street S. (District IV)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change, place the ordinance on first reading and authorize the Mayor to sign the ordinance (simple majority vote required).

16. *PUD2014-00001 – Zone Change From SF-5 Single-Family Residential to the Planned Unit Development (PUD#42) District on Property Located on the East Side of South Meridian Avenue, 1,700 Feet South of West MacArthur Road, 4200 South Meridian. (District IV)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested Planned Unit Development, PUD#42, subject to the recommended conditions of approval (simple majority vote required); authorize the Mayor to sign the ordinance and place the ordinance on first reading.

17. *SUB2014-00023 -- Plat of Westgate Village 3rd Addition located on the North Side of 13th Street North, West of Maize Road. (District V)

RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

None

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request (C.E. Machine Co., Inc.)
(District IV)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and place the ordinance on first reading.

Background: C.E. Machine Co., Inc., (C.E. Machine) located at 1741 S. Hoover Court in southwest Wichita was founded in 1975 by Charles Eck. C.E. Machine is a manufacturer of medium sized precision machine parts and assemblies for the aerospace industry. The company has continually invested in new technology, such as computer numeric controlled (CNC) machining centers, to support its work in the aviation sector.

On June 14, 2012, C.E. Machine submitted a letter of intent to seek an Economic Development Tax Exemption (EDX) to the City for a plant expansion project. The expansion was completed in 2013 and the company is now requesting approval of the EDX.

Analysis: C.E. Machine manufactures medium sized precision machine parts and assemblies for the aerospace industry. The close-tolerance component aircraft parts machined by C.E. Machine help support the U.S. Government Department of Defense and major aircraft manufacturers worldwide. C.E. Machine utilizes the newest technology available for machines and tooling. Currently, C.E. Machine supports production with an array of computer controlled manufacturing equipment. The list of equipment includes 4-axis and 5-axis CNC mills, CNC lathes, and an automated coordinate measuring machine.

C.E. Machine exports 99% of its products out of the State of Kansas by supplying original equipment manufacturers (OEMs) such as Bell Helicopters, Boeing, Cessna, Gulfstream and first tier suppliers such as Spirit AeroSystems. Its international customers include Embraer of Brazil, Alenia Aeronavali S.P.A of Italy, Labinal of Mexico, Fuji Heavy Industries of Japan, AOG Supply & Engineering of Singapore, Navfleet Logistics LTD of the United Kingdom, and Apollo Hi-Tech LTD of the United Kingdom.

The expansion project consists of the construction of a 25,000 square foot addition to its facility at a cost of \$923,455 and the acquisition of \$2,936,956 of new manufacturing equipment for a total capital investment of \$3,860,411. C.E. Machine currently employs 62 employees and plans to add at least 20 new jobs over the next five years. The average annual salary for all employees will be \$52,345.

Based on the City's sliding scale for determining the total tax abatement percentage, C.E. Machine qualifies for a 40% abatement for job creation and an additional 36.75% for its capital investment, for a total abatement of 76.75%.

Financial Considerations: C.E. Machine invested \$923,455 on real property improvements. Based on the 2013 mill levy, the amount of the abated taxes on that investment could be as much as \$21,369. This estimate assumes that 100% of the \$923,455 cost of improvements to real property will be reflected in a dollar-for-dollar increase in property value. The actual increase in value, will be determined by the

Sedgwick County Appraisers Office in the future as part of its on-going reappraisal process. Based on the 2013 mill levy, the estimated amount of exempted property taxes for the first full year is approximately \$21,369. The estimated amount of forgone tax revenue for each of the taxing jurisdictions based on the 76.75% real property tax exemption is as follows:

City	\$ 5,760	State	\$ 266
County	\$ 5,205	USD 259	\$10,138

Wichita State University's Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita	1.96 to one
Sedgwick County	1.70 to one
USD 259	1.30 to one
State of Kansas	23.93 to one

Legal Considerations: The Law Department has approved the attached Ordinance and Economic Development Incentive Agreement as to form.

Recommendations/Actions: It is recommended that the City Council close the public hearing and approve first reading of the ordinance granting C.E. Machine Co., Inc. a 76.75% tax exemption on the identified real property improvements for a five-year term, plus a 76.75% tax exemption for a second five-year term, subject to City Council review.

Attachments: Ordinance, Economic Development Incentive Agreement

FIRST PUBLISHED IN THE WICHITA EAGLE ON JULY 18, 2014

ORDINANCE NO. 49-776

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF C.E. MACHINE COMPANY, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, C.E. Machine Company, Inc., requests an ad valorem tax exemption on a proposed expansion project of 76.75% for a five-plus-five year term on the expansion and equipping of its existing facility; and

WHEREAS, C.E. Machine Company, Inc. has operated within the City for more than thirty-five years as a manufacturer; and

WHEREAS, C.E. Machine Company, Inc., proposes a \$3,860,411 expansion and equipping of a building located at 1741 S. Hoover Court in southwest Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by C.E. Machine Company, Inc., has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on July 8, 2014; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. C.E. Machine Company, Inc. is an existing business located in Wichita, Kansas, and intends to expand its business by the expansion and equipping of an existing building.

2. The expansion and equipping for which the exemption is given occurred after January 1, 2012. No exemption will be given for expansion and equipping which occurred before that date.

3. Such expansion and equipping is to be used exclusively for manufacturing and warehousing and distribution of articles of commerce.

4. By such expansion, C.E. Machine Company, Inc. will retain 62 employees and create new employment for 20 employees within five years after the start of the project.

5. Tax exemption will be given only for the expansion and equipping of the existing building.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by C.E. Machine Company, Inc. is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing and warehousing and distribution of articles of commerce.

2. C.E. Machine Company, Inc. is hereby granted an ad valorem tax exemption of 76.75% for a five-year term on the expansion and equipping of an existing building and 76.75% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 1741 S. Hoover Court in southwest Wichita, at an estimated cost of \$3,860,411. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and C.E. Machine Company, Inc. may be required to repay amounts previously abated), in the event of any failure by C.E. Machine Company, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and C.E. Machine Company, Inc. is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of C.E. Machine Company, Inc. and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in C.E. Machine Company, Inc.'s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated April 10, 2014 and as stated in C.E. Machine Company, Inc.'s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that C.E. Machine Company, Inc. no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which C.E. Machine Company, Inc. has executed with the City.

7. The City Council may, at its discretion, require C.E. Machine Company, Inc. to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which C.E. Machine Company, Inc. has executed with the City.

8. Upon finding that C.E. Machine Company, Inc. has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on C.E. Machine Company, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 15th day of July, 2014.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

Economic Development Incentive Agreement

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the “Agreement”) is made and entered into on this ____ day of July, 2014, by and between the City of Wichita, Kansas, hereinafter referred to as the “City,” and C.E. Machine Company, Inc. hereinafter referred to as the “Company.”

WHEREAS, the Company currently operates a manufacturing and warehousing and distribution facility in Wichita, Kansas, and will complete a building expansion, including equipping of said expansion, to its current facility; and

WHEREAS, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

WHEREAS, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

WHEREAS, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

WHEREAS, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

WHEREAS, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:
 - A. Between January 1, 2012 and December 31, 2013, the Company built and equipped an expansion to its existing facility, located at 1741 S. Hoover Court, Wichita, Kansas, at a cost of \$3,860,411, to be used exclusively for the purposes of manufacturing and warehousing and distributing articles of commerce;
 - B. Maintain, throughout the period from the date of this Agreement to December 31, 2018, employment of not less than sixty-two (62) employees at the new facility;

- C. On or prior to December 31, 2018, the Company will add an additional twenty (20) new jobs at the new facility, and thereafter, maintain employment of not less than eighty-two (82) employees through December 31, 2023;
- D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;
- E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;
- F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;
- G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;
- H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,
- I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

2. **EFFECT OF COMPANY'S BREACH; REMEDIES.** The Company acknowledges that in the event of its noncompliance with any of its obligations or agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.
3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the expansion and equipping of a building by the Company pursuant to Section 1.A., above, shall be entitled to an 76.75% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2014, such commencement date is contingent on the project actually being completed by December 31, 2013, and provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to a 76.75% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2019 to December 31, 2023, subject to the approval, in 2018, of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*
4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2023.
5. **INCORPORATION OF APPENDIX.** Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.
6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not

contained herein shall not be binding on either party, nor of any force or effect. In the event of a conflict between the terms of this Agreement and the terms contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development
Attn: Economic Development Administrator
455 North Main, 13th Floor
Wichita, Kansas 67202

and

Department of Law
Attn: City Attorney
455 North Main, 13th Floor
Wichita, Kansas 67202

Company: C.E. Machine Company, Inc.
Attn: Brian Eck
1741 S. Hoover Ct.
Wichita, KS 67209

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

C.E. MACHINE COMPANY, INC.

APPROVED AS TO FORM:

Gary Rebenstorf
Director of Law

Name: _____
Title: _____

APPENDIX A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**City of Wichita
City Council Meeting
July 8, 2014**

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request (Walton's, Inc.) (District II)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and place the ordinance on first reading.

Background: Walton's, Inc. (Walton's) was originally founded in 1986 as Mid-Western Research & Supply Inc. It is a wholesale supplier of services and products to the meat processing industry that distributes over 77% of its products and services to customers located outside of Kansas.

On March 9, 2012, Walton's submitted a letter of intent to seek an Economic Development Tax Exemption (EDX) to the City for a building acquisition and expansion. Walton's expansion was completed in 2013 and the company is now requesting approval of the EDX.

Analysis: Walton's began by selling meat grinders and knives. Beginning in 1996, it vastly expanded its product lines that today include kitchen accessories and equipment, casings, seasonings, packaging for meat products, grills, smokers, and more. It continues to search for additional products and services for the wholesale meat processing market.

In August 2013, Walton's moved into a facility located at 3639 N. Comotara that included 32,000 square feet plus an addition of 14,000 square feet. The 46,000 square foot warehousing and distribution facility more than doubled its previous space. The Comotara building had been vacant almost three years prior to its acquisition and expansion of the building. Walton's invested \$2,623,207 to acquire and remodel the facility plus an additional \$112,299 in new machinery and equipment for a total capital investment of \$2,735,506.

At the time of the expansion, Walton's employed 19 and projects hiring at least 11 new employees over the next five years at an average annual salary of \$37,818. Company-wide average annual salaries will be \$55,558.

Based on the City's sliding scale for determining the total tax abatement percentage, Walton's qualifies for a 26.5% abatement for its capital investment and an additional 31% for job creation, for a total abatement of 57.5%.

Financial Considerations: The Sedgwick County Appraiser's valuation of real property improvements subject to exemption is \$2,133,010, which includes improvements made by Walton's in 2013. Based on the 2013 mill levy, the estimated amount of exempted property taxes for the first full year is \$36,979. The estimated amount of forgone tax revenue for each of the taxing jurisdictions based on the 57.5% real property tax exemption is as follows:

City	\$ 9,968	State	\$ 460
County	\$ 9,008	USD 259	\$ 17,543

Wichita State University's Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita	1.89 to one
Sedgwick County	1.84 to one
USD 259	1.51 to one
State of Kansas	2.74 to one

Legal Considerations: The Law Department has approved the attached Ordinance and Economic Development Incentive Agreement as to form.

Recommendations/Actions: It is recommended that the City Council close the public hearing and approve first reading of the ordinance granting Walton's, Inc. a 57.5% tax exemption on the identified real property improvements for a five-year term, plus a 57.5% tax exemption for a second five-year term, subject to City Council review.

Attachments: Ordinance, Economic Development Incentive Agreement

Economic Development Incentive Agreement

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the “Agreement”) is made and entered into on this ____ day of July, 2014, by and between the City of Wichita, Kansas, hereinafter referred to as the “City,” and Walton’s, Inc. hereinafter referred to as the “Company.”

WHEREAS, the Company currently operates a warehousing and distribution facility in Wichita, Kansas, and will complete a building acquisition and expansion, including equipping of said expansion, to its facility; and

WHEREAS, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

WHEREAS, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

WHEREAS, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

WHEREAS, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

WHEREAS, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:
 - A. Between January 1, 2012 and December 31, 2013, the Company acquired, expanded and equipped a facility, located at 3639 N. Comotara, Wichita, Kansas, at a cost of \$2,735,506, to be used exclusively for the purposes of warehousing and distributing articles of commerce;
 - B. Maintain, throughout the period from the date of this Agreement to December 31, 2018, employment of not less than nineteen (19) employees at the new facility;
 - C. On or prior to December 31, 2018, the Company will add an additional eleven (11) new jobs at the new facility, and thereafter, maintain

employment of not less than thirty (30) employees through December 31, 2023;

- D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;
- E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;
- F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;
- G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;
- H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,
- I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

- 2. **EFFECT OF COMPANY'S BREACH; REMEDIES.** The Company acknowledges that in the event of its noncompliance with any of its obligations or

agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.

3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the expansion and equipping of a building by the Company pursuant to Section 1.A., above, shall be entitled to an 57.5% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2014, such commencement date is contingent on the project actually being completed by December 31, 2013, and provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to a 57.5% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2019 to December 31, 2023, subject to the approval, in 2018, of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*
4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2023.
5. **INCORPORATION OF APPENDIX.** Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.
6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. In the event of a conflict between the terms of this Agreement and the terms

contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development
Attn: Economic Development Administrator
455 North Main, 13th Floor
Wichita, Kansas 67202

and

Department of Law
Attn: City Attorney
455 North Main, 13th Floor
Wichita, Kansas 67202

Company: Walton's, Inc.
Attn: Brett Walton
3639 N. Comotara
Wichita, KS 67226

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

WALTON'S, INC.

APPROVED AS TO FORM:

Gary Rebenstorf
Director of Law

Name: _____
Title: _____

APPENDIX A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

FIRST PUBLISHED IN THE WICHITA EAGLE ON JULY 18, 2014

ORDINANCE NO. 49-777

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF WALTON'S, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Walton's, Inc., requests an ad valorem tax exemption on a proposed acquisition and expansion project of 57.5% for a five-plus-five year term on the acquisition, expansion and equipping of a facility; and

WHEREAS, Walton's, Inc. has operated within the City for more than twenty-five years as a distributor; and

WHEREAS, Walton's, Inc., proposes a \$2,735,506 acquisition, expansion and equipping of a building located at 3639 N. Comotara in northeast Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Walton's, Inc., has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on July 8, 2014; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Walton's, Inc. is an existing business located in Wichita, Kansas, and intends to expand its business by the acquisition, expansion and equipping of an existing building.

2. The acquisition, expansion and equipping for which the exemption is given occurred after January 1, 2012. No exemption will be given for expansion and equipping which occurred before that date.

3. Such acquisition, expansion and equipping is to be used exclusively for warehousing and distribution of articles of commerce.

4. By such acquisition and expansion, Walton's, Inc. will retain 19 employees and create new employment for 11 employees within five years after the start of the project.

5. Tax exemption will be given only for the acquisition, expansion and equipping of the existing building.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Walton's, Inc. is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for warehousing and distribution of articles of commerce.

2. Walton's, Inc. is hereby granted an ad valorem tax exemption of 57.5% for a five-year term on the acquisition, expansion and equipping of an existing building and 57.5% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 3639 N. Comotara in northeast Wichita, at an estimated cost of \$2,735,506. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Walton's, Inc. may be required to repay amounts previously abated), in the event of any failure by Walton's, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and Walton's, Inc. is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of Walton's, Inc. and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Walton's, Inc.'s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated April 10, 2014 and as stated in Walton's, Inc.'s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Walton's, Inc. no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Walton's, Inc. has executed with the City.

7. The City Council may, at its discretion, require Walton's, Inc. to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Walton's, Inc. has executed with the City.

8. Upon finding that Walton's, Inc. has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Walton's, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 15th day of July, 2014.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

**City of Wichita
City Council Meeting
July 8, 2014**

TO: Mayor and City Council

SUBJECT: Community Event Resolution, Wichita Convoy of Hope (**District IV**)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

Recommendation: Adopt the Resolution to authorize a use not allowed by the Wichita-Sedgwick County Unified Zoning Code (UZC) at the Wichita Convoy of Hope on August 2, 2014, and approve the permit for the community event.

Background: A community event application has been submitted for the Wichita Convoy of Hope, scheduled for August 2, 2014, at 3777 S. Meridian as operated by Bethel Life Center. **The purpose of the event is to provide various goods and services to the underserved and impoverished in Wichita through community outreach.** The proposed event site does not meet the requirements of the UZC because a portion of the event premises to be used for vehicle parking and egress from the site by volunteers and persons attending the event is unpaved. The provisions of Article IV, Section A(2) of the UZC do not allow the use of unsurfaced areas for vehicle parking or unsurfaced driveways for vehicular travel. Section 3.11.090(h) of the Code of the City of Wichita, provides that a proposed community event may not violate any law of the City of Wichita; however, a use not allowed by the UZC and the community event permit may be approved by the City Council after a public hearing. A use not allowed by the UZC may be permitted for a duration not exceeding 10 calendar days. In accordance with the City Code, a resolution is required authorizing the proposed noncompliant use and approving the permit for the community event. Upon the close of the public hearing, review of the application for the community event and consideration of the factors set forth in Section 3.11.080 of the Code of the City of Wichita, the Council shall determine if approval for the use not allowed and permit for the community event should be given.

Analysis: Staff has reviewed the application for the community event with the proposed use not allowed by the UZC, and based upon the factors set forth in Section 3.11.080 of the City Code, finds that all of the criteria set forth therein have been met.

Financial Consideration: **The event promoter is responsible for all costs associated with the community event permit. Staffing costs are not fully covered by the fees.**

Legal Consideration: The Law Department has prepared the proposed Resolution and approved as to form.

Recommendation/Actions: It is recommended that the City Council adopt the Resolution authorizing a use not allowed by the Wichita-Sedgwick County Unified Zoning Code (UZC) at the Wichita Convoy of Hope on August 2, 2014, and approve the permit for the community event.

Revised July 3, 2014

Attachments: Resolution and Community Event Application for the Wichita Convoy of Hope.

RESOLUTION NO.14-186

A RESOLUTION BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS APPROVING A COMMUNITY EVENT PERMIT APPLICATION FROM WICHITA CONVOY OF HOPE, ALLOWING OFF-STREET PARKING OF VEHICLES ON AN UNSURFACED AREA AND THE USE OF AN UNSURFACED DRIVEWAY FOR EGRESS FROM THE EVENT.

WHEREAS, the City recognizes that substantial community benefits may result from community events. They can provide community outreach, cultural enrichment, promote economic vitality and enhance community identity. Further, events such as Wichita Convoy of Hope operate to provide various services and goods to the under-served and impoverished neighborhoods within the City, as well as connections to other assistance and social service organizations;

WHEREAS, Wichita Convoy of Hope, operated by Bethel Life Center, has applied for a community event permit pursuant to Chapter 3.11 of the Code of the City of Wichita. Said event is proposed to occur at 3777 S. Meridian on Saturday, August 2, 2014 from 8:00 a.m. – 5:00 p.m.; and

WHEREAS, the proposed event will provide outreach services to over 6,000 citizens and will use the services of many volunteers, all creating a need for vehicle parking space and also for orderly egress from the event site; and

WHEREAS, the proposed event site does not meet the requirements of the Wichita-Sedgwick County Unified Zoning Code due to unsurfaced parking area and unsurfaced driveways upon the premises which are needed to accommodate the size of the event and the anticipated number of persons attending; and

WHEREAS, pursuant to Section 3.11.090(h) of the Code of the City of Wichita, Kansas, a proposed community event may not violate any law of the City of Wichita, State of Kansas or

of the United States, provided, however, a community event permit may be approved and a use not allowed by the Wichita-Sedgwick County Unified Zoning Code may be permitted to proceed if approved by the City Council after a public hearing regarding the same and for a duration not exceeding ten (10) calendar days; and

WHEREAS, the proposed event does not otherwise present a safety, noise, or traffic hazard and will not obstruct the operation of emergency vehicles or equipment in or through the area; and

WHEREAS, the proposed application on file for this event will be subject to review by the Community Event Committee pursuant to Chapter 3.11 of the Code of the City of Wichita, with no other issues anticipated which would impede such approval.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS;

1. A public hearing having been held as required by Section 3.11.090 (h) of the Code of the City of Wichita, the community event permit shall be approved for the Wichita Convoy of Hope event to be held Saturday, August 2, 2014 at 3777 S. Meridian from 8:00 a.m. to 5:00 p.m. During this event, Bethel Life Center may allow parking of vehicles on unsurfaced areas and the use of any unsurfaced driveway upon the premises of the event which are outside the provisions of Article IV, Section A(2) of the Wichita-Sedgwick Unified Zoning Code.
2. All events and activities to be held at the Wichita Convoy of Hope site will be subject to approval by the Community Event Committee pursuant to Chapter 3.11 of the Code of the City of Wichita.
3. This resolution shall be effective upon adoption by City Council.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS,
this 8th day of July, 2014.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf
City Attorney



COMMUNITY EVENT APPLICATION **and Temporary Entertainment District Application**

Applications and applicable fees must be submitted to:

Division of Arts & Cultural Services | 225 West Douglas | Wichita, KS 67202
(W) 316-303-8630 (F) 316-858-7960 csclark@wichita.gov

Completion of a Community Event Application is required when the following conditions apply:

The City of Wichita defines a Community Event as follows:

- Outdoor event on public and/or private property
- Attendance in excess of 100 persons on public property and/or 250 persons on private or park property.
Excludes invitation only events taking place on private property.
- Involves a particular purpose and time.
- **If Alcoholic Liquor or Cereal Malt Beverage is to be served or sold at an event, all portions of this application necessary to either establish a Temporary Entertainment District (for alcoholic liquor) or to obtain written City Council approval (for CMB) MUST be completed.**

Any or all conditions below may apply to a Community Event: Some conditions may require a separate permit, which might include City Council approval. The Community Event Ordinance 3.11, Municipal Codes and Licensing applications can be accessed from www.wichita.gov under the Business tab or by request to the Community Event Coordinator.

General Information:

The City of Wichita may refuse any application received less than 45 days before the event or lacking requested information. Applications received less than 30 days, but more than 10 business days prior to the proposed event will be assessed additional fees. **NO application will be accepted LESS THAN 10 business days prior to the proposed event.** Any information required by the application must be complete upon submittal. Incomplete applications may be denied. When received, an application is subject to approval of all departments involved and will be required to provide the following:

- Application filing fee (\$25) made payable to City of Wichita.
- Licensing fee (varies) made payable to the City of Wichita.
- Street closure request (\$25.00 *if applicable*) made payable to the City of Wichita.
- Certificate of Liability Insurance naming the City of Wichita as additionally insured.
- Site plan defining the placement of alcohol point of sale, barricade locations, exit location, trash, restrooms, signage, etc.
- Security requirements including hiring of certified law enforcement officers.
- Vendor list including contact person and contact information.

Application Date: February 4, 2014

Event Title: Wichita Convoy of Hope

Event Date(s)/Time: Saturday, August 2, 2014



Event Address for Permit: 3777 S. Meridian

Property (Circle all that apply): **Public** **Park** **Private**

Event Promoter Name: Gail A. Starnes/Bethel Life Center

Address: 3777 S. Meridian

Phone: (316) 522-7148 **Mobile:** (316) 990-0932

E-mail: gailstarnes1@blcwichita.com

Will Alcoholic Liquor or CMB be sold and/or served? (Circle one): **Yes** or **No**

Onsite Alcohol Supervisor Name: n/a

Address: n/a

Phone: () n/a **Mobile:** () n/a

E-mail: n/a

Will food be sold and/or served? (Circle One): **Yes** or **No**

Food Coordinator Name: Kenny Hultman

Phone: (316) 204-9084 **Mobile:** (316) 204-9084

E-mail: kwhultman@gmail.com



Type of Event (Circle all that apply):

Animal Exhibition Carnival Circus Concert Dance Fireworks Live Entertainment Parade

Temporary Amusement Rides Walk/Run/Marathon Street Closure

Other Community Outreach

Attendance (circle one): Public or Private/Invitation Only

Estimated Attendance: 6-8,000

Number of participants in previous years: 6,340
(If applicable)

Will admission be charged? no
(If yes, what amount?)

Is this event a fundraiser? no
(If yes, for what organization?)

Street Closure Requested? (Circle One): Yes or No not at this time/working with WPD to determine

Date(s)/Time/Location of Street Closures (or attached information):

/



Description, Website and/or Facebook Page of Event (or attached flier):

Community Outreach to provide various services/goods to the under-served/impoverished of Wichita

Job Fair, Various Community and Medical Services as well as free haircuts, family portraits, free groceries, connection to various social services, etc. There will be activities for families to enjoy such as live entertainment kids zone, free lunch, etc.

I, Gail A. Starnes, the above named applicant, do solemnly swear that I have read the contents of this application and that all information and answers herein contained are completed and true. In addition, I have read and understand all rules and regulations as set out in the Code of the City of Wichita. Furthermore, I hereby agree to comply with all of the laws of the State of Kansas, and all rules and regulations prescribed by the City of Wichita and I have consent to the immediate revocation of my license, by the proper officials, for any violation of such laws, rules, or regulations.

Gail A. Starnes, Coordinator,

Signature of Event Applicant

2/4/2014

Date

Wichita Convoy of Hope

Organization/Event

City of Wichita Representative

5/5/2014

Date

COMMUNITY EVENT CHECKLIST **and Temporary Entertainment District Checklist**

Checklist must accompany Application and applicable fees and mail to:

Division of Arts & Cultural Services | 225 West Douglas | Wichita, KS 67202

(W) 316-303-8630 (F) 316-858-7960 csclark@wichita.gov

Completion of a Community Event Application is required when the following conditions apply: *The City of Wichita defines a Community Event as follows:*

- Outdoor event on public and/or private property
- Attendance in excess of 100 persons on public property and/or 250 on private or park property. Excludes invitation only events taking place on private property.
- Involves a particular purpose and time.

Approval of all applicable departments is required before permit is issued. The applicant shall be required to provide certified law enforcement officers, portable restrooms, and trash service in adequate number as reasonably determined by the procedures set forth. All vendors must be properly licensed and inspected. The applicant shall also be required to obtain, place and remove signs and barricades to close streets in accordance with requirements of the City. The applicant is responsible for all costs associated with the community event.

The Community Event Ordinance 3.11, Municipal Codes and Licensing applications can be accessible from www.wichita.gov under the Business tab or by request to the Community Event Coordinator.

N/A **1. Certificate of Insurance - Must accompany initial application** *- Private Property*

The applicant shall be required to **maintain insurance reasonably acceptable to the City covering all aspects of the event** in a minimum amount of \$500,000 public liability insurance and \$50,000 property damage insurance, in addition to other insurance as required by law. The insurance policies must include the City of Wichita and its agencies as additional insured.

✓ **2. Site Plan - Must accompany initial application**

A Site Map/Plan and Event Notice **must be attached to application**. The site map/plan shall include: (1) streets requested for closure; (2) entry and exit points of event venue; (3) stage placement; (4) portable restroom locations; (5) trash receptacle locations; and, if applicable, (6) description of signage and barriers defining the area which alcoholic liquor or CMB may be consumed; (7) point of sale of alcoholic beverages; and (8) location of participating establishments.

(see copy)
Still pending changes per COH Int'l

✓ **3. Security Requirements - Minimum 15 day approval process**

Security requirements shall be determined in coordination with the Wichita Police Department. The applicant will be required to hire certified law enforcement officers in addition to any other security the promoter provides on the event site.

In process - have had 2 meetings - more to come

✓ **4. Traffic Flow Plan (Section 3.11.150) – Must accompany initial application**

The plan should include any information that will impact the flow of traffic, such as requested street closures; route for parade, run/walk, or any other request. Does not include events solely on sidewalks or public rights-of-way immediately adjacent to public streets unless alcoholic beverages are to be consumed in these areas. Applicants will be required to disclose the date, street name, location, and time period for approval of requested street closures. Please attach the traffic flow plan as part of the site map/plan. Closure for any major street requires adequate street closure equipment to include signs and barricades and certified law enforcement officers, to be provided by applicant. All affected property owners are required to be notified in writing for intended street closure and a copy of such list is to be included as part of the community event application requirements.

Only temporary street markings are allowed and must be removed immediately upon completion of the event.

WPD working on this

✓ **5. Trash Receptacles – Minimum 15 day approval process** - B.C. will provide

The number of trash containers shall be based upon industry standards for sanitation and public convenience and will include consideration of the type of food and packaging. Requirements will be determined on event criteria and established with contracted vendor. Trash service will include servicing during an event for four hours or more and picking up of all trash and debris during and after the event. Upon completion of the event public property shall be left in the same condition or better than received. Trash containers may be located only in areas approved on site map/plan.

✓ **6. Portable Restrooms – Minimum 15 day approval process** - B.C. will provide

The number of portable restrooms shall be based upon industry standards for sanitation and public convenience. Requirements will be determined on event criteria and established with contracted vendor. The plan must provide for service during the event if planned for four hours or more. Portable restrooms may be located only in areas approved on site map/plan.

N/A ✓ **7. Food Vendors Transient Merchant License (Chapter 3.95) - Minimum 15 day approval process**

Food vendors must be licensed and inspected through the City of Wichita. A list of vendors including contact person and contact information must be submitted with the Community Event Application.

N/A ✓ **8. Transient Merchant License (Chapter 3.95) – Minimum 15 day approval process**

Transient Merchants are described as vendors selling wares or food from 7:00 am until midnight. Each vendor is required to complete a separate Transient Merchant application including signature. A copy of current Sales Tax License from the State of Kansas or proof of exempt status must accompany application. A list of vendors including contact person and contact information must be submitted with the Community Event Application.

N/A **9. Cereal Malt Beverage and Alcoholic Liquor Licenses (Chapter 4.12, Section 4.16.070(e) and KSA 41-2645 - Minimum 45 day approval process**

The applicant shall be responsible for compliance with CMB and Alcoholic Liquor laws as well as all other laws and ordinances in the conduct of the event. Click on the "Business" tab at the top of the Home Page then click on "City of Wichita License Applications" to locate Liquor License and/or CMB license application.

N/A **10. Cereal Malt Beverage and Alcoholic Liquor Consumption Regulations (Title 10) - Minimum 45 day approval process**

The applicant and onsite supervisor (if different) shall be responsible for compliance with all regulations as set forth in Section 3.11.065 of the City Code. **Consumption of CMB or alcoholic liquor on public streets and sidewalks is only allowed when the street is closed to vehicular traffic and with written approval of the City council.**

✓ **11. Tents and Canopies (Chapter 18.36 Ordinance 41-502) - Minimum 5 day approval process**

A Permit will be required if the tent meets one of the following: The Tent has sides and is greater than 200 square feet OR is greater than 400square feet.

If a Tent Permit is required , the applicant will be required to appear in person at the Office of Central Inspection located in City Hall on the 7th floor, 455 N Main, Wichita, KS. The following information is required to obtain the permit: (1) the address where the tent will be located; (2) written permission of the property owner; (3) the size of the tent or canopy; (4) dates of erection and duration; (5) onsite contact name and contact information.

N/A **12. Parade (Chapter 3.13.020) – Minimum 10 day approval process**

Parade route diagram and/or site map/plan must be attached to the application showing formation area, starting point and termination point.

 13. Temporary Amusement Ride License (Chapter 3.20) – Minimum 30 day approval process

Pending - TBD
Completed application must include name of approved vendor. A current copy of certificate of inspection for each ride and applicable insurance must be on file with the City of Wichita. Placement of rides must be noted on site map/plan.

N/A **14. Fireworks License – (Chapter 15.0) Minimum 30 day approval process**

Completed application must include a copy of the Firework Operator Certificate. Applicant is required to include a site map/plan of the shooting site, fallout zone, a list of shell sizes and applicable insurance.

 15. Animal Exhibition License (Chapter 3.09) – Minimum 20 day approval process.

Completed application must include USDA animal documentation, name and address of licensed veterinarian responsible for the care of the animals and proof of liability insurance.

Pending - TBD

✓ **16. Event Times - (Municipal Code Section 3.11.155)**

Outdoor entertainment may operate 8:00 am until 11:00 pm Sunday through Thursday, 8:00 am until Midnight Friday and Saturday. The applicant shall at all times be responsible for compliance with laws and ordinances regulating the times of events.

✓ **17. Noise Level – (Chapter 7.41)**

The applicant shall be required to ensure that sound levels do not exceed that which is appropriate for the event area and its location and is in compliance with the provisions the code of the City of Wichita. The applicant will respond in a timely and effective manner to requests of the city's representatives concerning the sound level. The WPD or authorized representatives of the City shall have the authority to cancel musical performances or events for substantial or repeated violations.

✓ **18. Miscellaneous**

No excavation shall be made on public property nor objects/promotional items be placed or attached to public property except as expressly approved by permit or license. The applicant shall be required to abide by such other requirements as may be reasonable for the approval of the application.

I have read and understand the above information and regulations and accept them on behalf of the following organization.

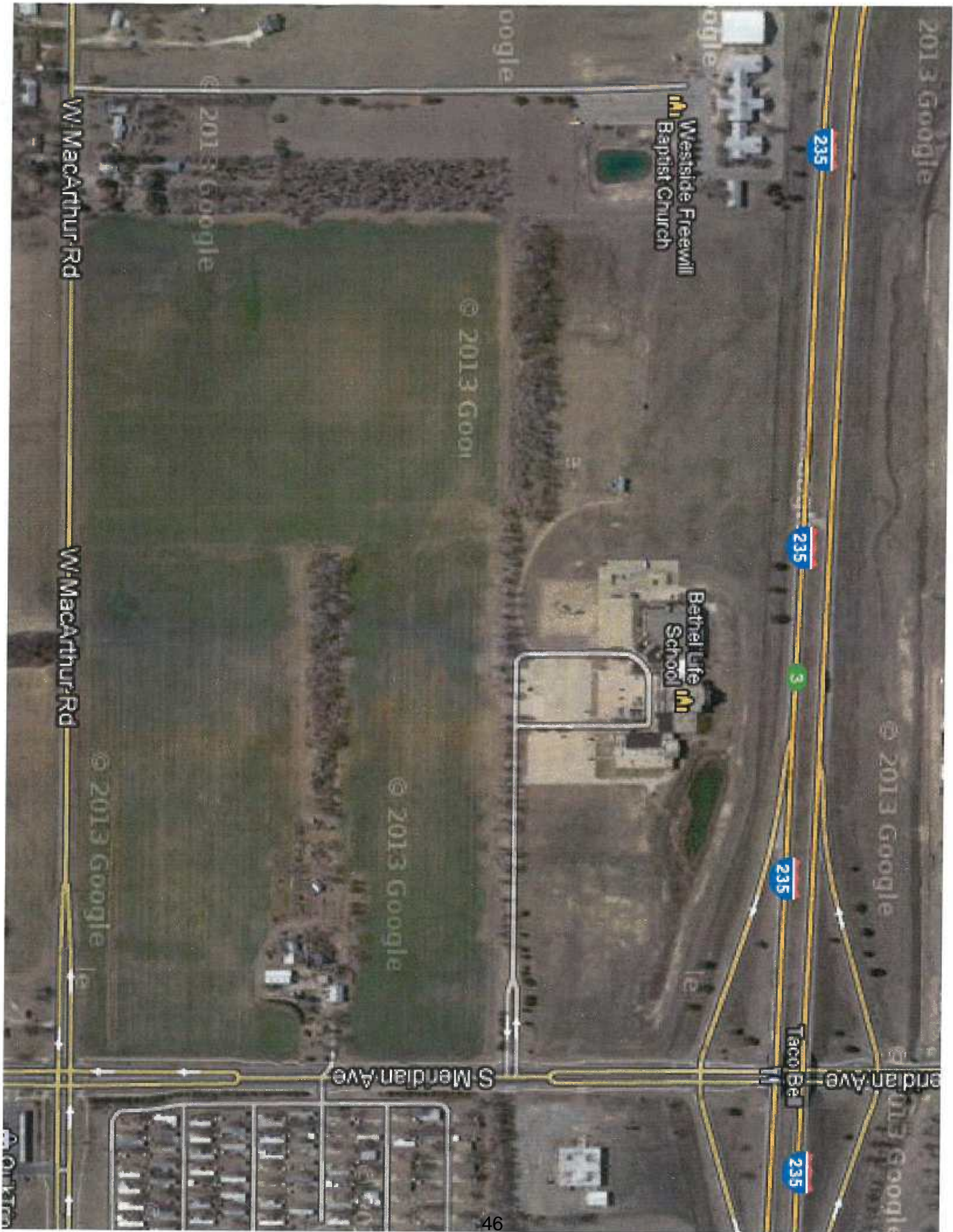

Signature of Event Applicant

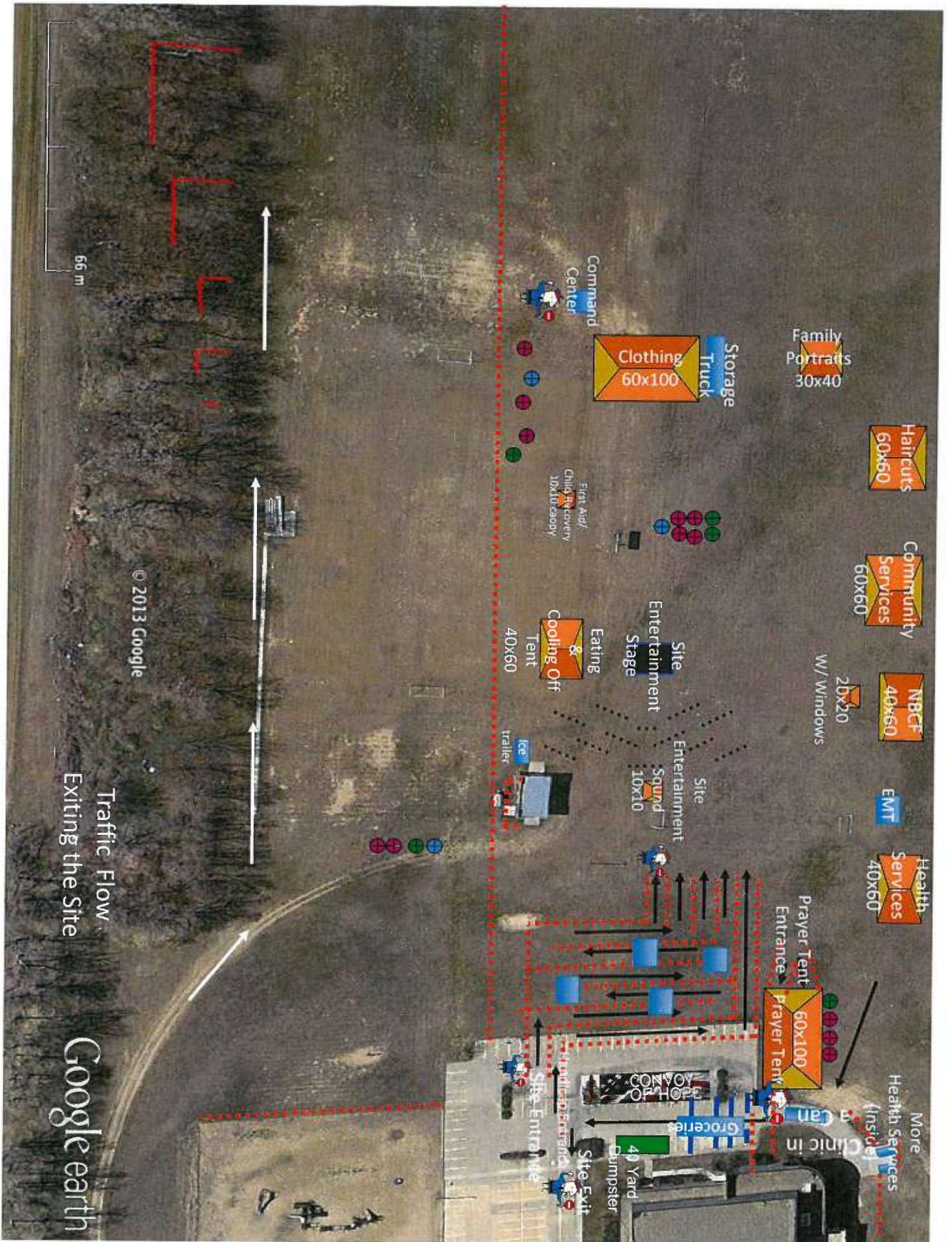
2/4/14
Date

Convey of Hope
Organization/Event


City of Wichita Representative

5/5/2014
Date





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/29/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency, LLC Haake Companies 7015 College Blvd., Suite 400 Overland Park, KS 66211-1671	CONTACT NAME:	PHONE (A/C, No, Ext): 913 491-1999	FAX (A/C, No): 913-906-0088
	E-MAIL ADDRESS:		
INSURED Convoy of Hope 330 S Patterson Springfield, MO 65802	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Atain Insurance Company		29033
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																																		
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Bethel Life Center is recognized as Additional Insured for which premises is utilized for special event from 7/29/2013 to 8/5/2013.

CERTIFICATE HOLDER

CANCELLATION

Bethel Life Center
3777 S Meridian
Wichita, KS 67217

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Wanda Haake

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL JULY 8, 2014**

- a. 2014 Sanitary Sewer Rehabilitation Phase C (CIPP) (north of 31st Street S, east of West Street) (468-84940/620707/664012) Traffic to be maintained during construction using flagpersons and barricades. (District I,IV) - \$398,000.00
- b. Douglas Avenue Bus Facility Improvements (Market St. to Washington Ave.) (472-85080/716138/716139/716140/716141/) Traffic to be maintained during construction using flagpersons and barricades. (District I,III) - \$1,350,000.00
- c. 2014 Sanitary Sewer Reconstruction Phase 6 (north of Harry, easts of Hoover) (468-84966/620708/664013) Traffic to be maintained during construction using flagpersons and barricades. (District I,IV,VI) - \$567,000.00
- d. Tara Falls from the south lot line of Lot 3, Block 2, Casa Bella Addition to the north plat line of Casa Bella Addition and Tara Falls Court from the west line of Tara Falls to and including the cul-de-sac to serve Casa Bella Addition (north of Pawnee, west of 127th Street East) (472-84338/766308/490326) Does not affect existing traffic. (District II) - \$162,000.00

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: Community Events – Automobilia’s Moonlight Car Show and Street Party
(District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Gary Carpenter is coordinating the Automobilia’s Moonlight Car Show and Street Party with area business owners and making arrangements with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Automobilia’s Moonlight Car Show and Street Party July 12, 2014 1:00 pm – July 13, 2014 1:00 am

- First Street, Broadway Street to Mosley Street.
- Topeka Street, Douglas Avenue to First Street.
- Emporia Street, Douglas Avenue to Second Street.
- St. Francis Street, Douglas Avenue to Second Street.
- Santa Fe Street, Douglas Avenue to First Street.
- Mead Street, First Street to Douglas Avenue.
- Moore Street, First Street to Douglas Avenue.
- Rock Island Street, First Street to Douglas Avenue.

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring of off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: Cheney Reservoir Kansas Department of Wildlife, Parks and Tourism Management Agreement (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the renewal of the Cheney Reservoir Fish and Wildlife Area Management Agreement between the United States Bureau of Reclamation (BOR), the Kansas Department of Wildlife, Parks and Tourism (KDWPT), and the City of Wichita.

Background: Cheney Reservoir is a major water supply source for Wichita, providing approximately 60% of Wichita's annual water supply. The BOR constructed Cheney Dam in 1965, with the City participating in funding the construction. As part of that contract, on January 18, 1961, portions of Cheney Reservoir were made available to the KDWPT for fish and wildlife management. On October 21, 1963, the BOR and the City entered into a second contract with the KDWPT, reassigning the administration, development, operation and maintenance of the Fish and Wildlife Area of Cheney Reservoir from the City to the KDWPT. The contract was renewed for a second 25 year period in the late 1980s.

Analysis: The proposed agreement will renew the contract for a period of 25 years.

Financial Considerations: There are no new or continuing costs to the City associated with the renewal of the agreement.

Legal Considerations: The agreement has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.



RECLAMATION

Managing Water in the West

Management Agreement

between the

**United States of America,
Bureau of Reclamation**

and the

**Kansas Department of Wildlife,
Parks and Tourism**

**Administration and Development
of
Fish and Wildlife Facilities and Resources
at
Cheney Reservoir, Wichita Project, Kansas**

**U.S. Bureau of Reclamation
Great Plains Region
Oklahoma-Texas Area Office**

Agreement No. 12-XX-6H-0102

**UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WICHITA PROJECT, KANSAS**

**MANAGEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA,
BUREAU OF RECLAMATION
AND THE KANSAS DEPARTMENT OF WILDLIFE, PARKS AND TOURISM
FOR THE ADMINISTRATION AND DEVELOPMENT OF FISH AND WILDLIFE
FACILITIES AND RESOURCES
WITHIN THE CHENEY RESERVOIR AREA**

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Management Agreement No. 12-XX-6H-0102

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Signature Page

Exhibit "A" – Map of the Fish and Wildlife Area
Exhibit "B" – Equal Opportunity Requirements
Exhibit "C" – Title VI, Civil Rights Act of 1964

**MANAGEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA,
BUREAU OF RECLAMATION
AND THE KANSAS DEPARTMENT OF WILDLIFE, PARKS AND TOURISM
FOR THE ADMINISTRATION AND DEVELOPMENT OF FISH AND WILDLIFE
FACILITIES AND RESOURCES
WITHIN THE CHENEY RESERVOIR AREA**

This Management Agreement (Agreement), made this day of , by and between the UNITED STATES OF AMERICA, acting through the Department of the Interior, Bureau of Reclamation (Reclamation), represented by the officer executing this instrument on its behalf, successor officers or duly authorized representatives, and the State of Kansas, acting by and through the Kansas Department of Wildlife, Parks and Tourism (Department), is made in accordance with the Act of Congress of June 17, 1902, (32 Stat. 388) and acts amendatory thereof and supplementary thereto, particularly the Act of September 14, 1960 (Public Law 86-787, 86th Congress; 74 Stat. 1026) which authorized the Cheney Division of the Wichita Project (Project), and the Federal Water Project Public Recreation Act of July 9, 1965, Public Law 89-72, as amended; and Chapter 74, Article 45, General Statutes of Kansas, 1961 Supplement.

WITNESSETH, THAT:

WHEREAS, the United States owns lands and interests in lands for Cheney Reservoir (Reservoir) located in Kingman, Reno, and Sedgwick Counties, Kansas; and

WHEREAS, under the terms of Article 16 of Contract No. 14-06-500-538 dated January 18, 1961, between Reclamation and the City of Wichita (City), and under the terms of Sec. 6 of Public Law 86-787 dated September 14, 1960 authorizing construction of the Wichita Project, appropriate portions of the project area may be made available to the Department for fish and wildlife management; and

WHEREAS, the Federal Water Project Recreation Act authorizes Reclamation to enter into agreements with non-federal public bodies for the purpose of administering and developing Federal lands and facilities for recreation and fish and wildlife purposes; and

WHEREAS, Reclamation and the Kansas Forestry, Fish and Game Commission, (currently known as the Department) entered into Contract No. 14-06-500-873, dated October 21, 1963, for the operation of a Fish and Wildlife Area at the Reservoir; and

WHEREAS, the Department and Reclamation, and the City, as indicated by its concurrence hereof, desire to enter into this Agreement for the administration, development, operation and maintenance of the Fish and Wildlife Area (Exhibit A), as described below:

NOW, THEREFORE, the parties hereto agree as follows:

1. TERM OF AGREEMENT

The term of this Agreement shall commence on the date written above and continue for a period of twenty-five (25) years, unless sooner terminated. Two (2) years prior to the expiration of this Agreement, the Department shall notify Reclamation in writing of its desire to negotiate a new Agreement or to discontinue its management responsibilities at the expiration of this Agreement. Execution of this Agreement replaces Contract No. 14-06-500-873 and amendments thereto.

2. MISCELLANEOUS PROVISIONS

A. Subject to the terms, conditions, limitations, exceptions, and reservations contained in this Agreement, the Department hereby accepts responsibility for the planning, development, construction, management, operation, and maintenance of public fish and wildlife facilities and other related improvements and land at the Fish and Wildlife Area. The Department acknowledges that it has inspected all land and water areas covered by this Agreement and is aware of all hazardous or potentially hazardous conditions existing thereon.

B. The Department will inform Reclamation of all proposed planning, construction, management, operation, and maintenance activities pursuant to this Agreement. Reclamation will retain final approval authority for all such activities. Reclamation will approve or deny actions, in writing, proposed by the Department within 90 days of notice to Reclamation, except in extraordinary situations where a longer time period is warranted.

C. The Department will manage, operate, and maintain all public facilities in good repair.

D. The Department may construct, replace, add to, or alter public use facilities at the Fish and Wildlife Area upon prior written approval from Reclamation. Reclamation will approve or deny, in writing, construction proposed by the Department within 90 days of notice to Reclamation, except in extraordinary situations where a longer time period is warranted.

E. All applicable contracts issued by the Department, its contractors, or permittees, relative to this Agreement shall include the Equal Opportunity Requirements set forth in Exhibit "B", attached hereto and incorporated herein.

F. The Department agrees that it and its employees will not discriminate because of race, color, age, religion, sex, or national origin against any person by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. The Department or its employees shall not publicize accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, color, age, religion, sex, or national origin. The Department agrees to include and require compliance with a provision similar to the foregoing provision in any contract made with respect to the operations to be carried out hereunder.

G. This Agreement is subject to Title VI, Civil Rights Act of 1964 (78 Stat. 241) and Interior Regulations issued pursuant thereto in 43 CFR 17, as modified or amended, and set forth in Exhibit "C", attached hereto and incorporated herein, wherein Department is referred to as "Contractor."

3. RECLAMATION USE PARAMOUNT

The rights of the Department under this Agreement are subordinate to the rights of Reclamation, its agents, employees, or assigns relating to use of the Fish and Wildlife Area, including, but not limited to, the following:

A. Reclamation may restrict public use of the Fish and Wildlife Area whenever it determines that such restriction is necessary in the interest of Project operations, public or resource safety, or national security. Reclamation retains primary administrative jurisdiction over the land and water areas specifically addressed in this Agreement.

B. Reclamation's properly authorized officers, agents, assignees, licensees, permittees, employees, etc., at all times and without charge, have unrestricted access and ingress to, passage over, and egress from all Federal lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incidental to Federal Reclamation projects, or for any purpose whatsoever.

C. Reclamation maintains the right to manage existing and future rights-of-way, permits, licenses, etc., in favor of the public or third parties for highways, roads, railroads, telephone, telegraph and electrical transmission lines, canals, laterals, ditches, flumes, siphons, and pipelines over and across the land. Grants of land or land-use rights, including permits to utilize surface overlying oil, gas, and minerals leased to third parties and including utility or pipeline rights-of-ways, may be issued by Reclamation after consultation with the Department. Such activities may occur without compensation to the Department from Reclamation or recipients of such rights-of-way, permits, licenses, etc. Reclamation will furnish to the Department, upon its request, a list of all existing land use authorizations within the Fish and Wildlife Area.

D. Reclamation reserves the right to remove from the Fish and Wildlife Area any and all materials necessary for construction, operation, and maintenance of the Project works and facilities after consultation with the Department.

E. In the event that a plan or an act of Reclamation is likely to have a significant impact on the Department's operations, damage a Department improvement, negatively affect the public's use and enjoyment of facilities, in the Fish and Wildlife Area or the Reservoir, or interfere with the Department's ability to fulfill the conditions of this Agreement, Reclamation will (except as noted in F. below), prior to making such a change in operation or decision thereto, notify the Department of the anticipated act or omission, meet with the Department to discuss the possibility for alternative courses that may mitigate negative consequences to the Department and its constituents, and consider the recommendations of the Department. If, after having consulted with Reclamation, the Department determines that Reclamation's planned act or

omission will make it impractical for the Department to continue its management function, the Department may terminate this Agreement, provided that the Department provides Reclamation at least 180 calendar days advance notice. If this Agreement is terminated in this manner there will be no further costs to the Department or Reclamation.

F. In the event of an immediate closure due to national security or emergency purposes, Reclamation will meet with the Department as soon as possible after the event causing a closure occurs.

4. SOIL AND WATER CONSERVATION

The Department will take all reasonable measures necessary to: minimize siltation and erosion; protect land and water resources; prevent and suppress fire; protect against the introduction and spread of noxious weeds and other pests, including domestic or feral animals detrimental to natural resources, agriculture or public health and safety; control noxious weeds and pests as necessary; and, will cooperate in soil and water conservation, and fish and wildlife enhancement practices. The Department shall include suitable provisions for such controls in all contracts and permits entered into by the Department. The Department is not responsible, financially or otherwise, for correcting damages, pollution, or deterioration caused by Reclamation.

5. USE OF EXISTING FACILITIES

The Department may use existing Reclamation structures or facilities located in the Fish and Wildlife Area which Reclamation designates as available and suitable for public recreation purposes. The Department shall maintain all such structures and facilities used by it under the terms of this Agreement in reasonable repair; provided that, the Department shall be under no obligation to restore or replace any such structures or facilities which may be destroyed by fire or other cause without negligence of the Department or its authorized permittees or contractors, its agents, assignees, licensees, or employees. The Department may add to, alter, or modify any such structures or facilities only upon prior written approval by Reclamation of the plan for such additions, modifications, or alterations. Such additions, modifications, or alterations to Reclamation owned structures or facilities shall become the property of Reclamation.

6. RESOURCE MANAGEMENT PLAN.

There is no existing or planned Reclamation Resource Management Plan (RMP) on the date that this Agreement is executed. Until such time as an RMP is completed for the Project, the Department will follow all applicable existing and future Department and Reclamation policies and procedures related to the planning, administration, management, operation, and maintenance of the Fish and Wildlife Area, pursuant to this Agreement.

7. THIRD PARTY CONTRACTS AND PERMITS

A. The Department may issue and administer third party permits, other use authorizations, or concession contracts to persons or associations for the purpose of improving the Fish and Wildlife Area for the use of the visiting public and/or to carry out wildlife conservation and management purposes consistent with the intent and stipulations of this Agreement and in accordance with the RMP or other planning documents that may exist. The Department shall submit all such contracts, use authorizations, and permits to Reclamation for its review and approval before issuance. Reclamation shall not unreasonably withhold such approval. The contracts, use authorizations, and permits shall contain language subjecting the rights and privileges there-under to all terms, conditions, exceptions, and reservations in this Agreement; shall recognize the right of paramount use by Reclamation of the Fish and Wildlife Area for Project purposes; and, include releases and indemnification to and for Reclamation, its officers, agents, employees, contractors, and assigns for and on account of the construction and operation and maintenance of the Project.

B. No concession contract, use authorization, or permit entered into or granted by the Department shall purport to transfer or convey any interest in the land, water or any public facilities; and the right given to the Department to enter into such contracts, use authorizations, and permits shall not be construed as a right to grant or convey an interest in the land, water, or any public facilities. No assignment or transfer of a concession contract, use authorization, or permit or interest therein, whether as security or otherwise, shall be effective until such assignment or transfer has been reviewed and approved in writing by the Department and Reclamation. All concession contracts issued by the Department must comply with Reclamation's Concession Management Policy and Directives and Standards. Should there be changes in the future to the mentioned Policy, Directives, and Standards, concession contracts will be required to comply with such revised Policy, Directives, and Standards.

C. Said concession contracts, use authorizations, and permits shall provide that, in the event of the termination of this Agreement, Reclamation will not stand in the stead of the Department as grantor for the remainder of the term of said contracts or permits. In the event of such Agreement termination and at Reclamation's discretion, Reclamation may issue new concession contracts, use authorizations, or permits to existing concessionaires or permittees that are in compliance with the Concessions Management Policy and Directives and Standards or other applicable policies, rules, regulations, etc. Reclamation will not issue new contracts, use authorizations, or permits if the concessionaires or permittees are in default of any term or condition of the Department issued contracts or permits or are operating in violation of the Concessions Management Policy and Directives and Standards or other applicable policies, rules, regulations, etc.

D. The term for a concession contract, use authorization, or permit may not extend beyond the term of this Agreement. The term of such contracts, use authorizations, or permits should be as short as possible and based on economic factors and conditions. Reclamation will work with the Department to determine reasonable lengths of term.

E. Concessionaires, contractors and permittees shall be required to comply with all applicable provisions of Federal, State, Department and local laws, rules and regulations, Executive Orders, and Reclamation Policies, in force now or as may be promulgated or changed in the future.

F. The Department shall not issue, or allow to be issued, directly or through the actions of its concessionaires or permittees, permits or other forms of agreements that allow for the development of privately owned exclusive uses, such as, but not limited to: cabin sites; mobile home or travel trailer sites; private boat docks; ski clubs; boat clubs etc. This does not prohibit the Department or its duly appointed concessionaires from developing facilities or services in accordance with the intent of this Agreement. Any concession contract must address the disposition of concessionaire owned property.

G. The Department may enter into basic service contracts without prior review and written approval of Reclamation. Such contracts may include, but not necessarily be limited to, services for normal maintenance of the area, including trash removal and disposal, toilet pumping, or general grounds maintenance, road maintenance, etc. Such contracts may not exceed the expiration or termination of the management agreement.

8. FEES AND CHARGES

The Department may, within the limits of its authority and subject to its discretion, maintain and/or institute cost recovery of expenses and revenue enhancement by charging market-based recreational entrance and user fees for services provided at the Fish and Wildlife Area. The Department may permit its authorized concessionaires and permittees to charge for services and/or sale of products and goods. The Department shall annually approve such service fees and product and food prices charged by a concessionaire or permittee before they are placed into effect. Any fees levied by the Department will be set in accordance with fees established for other comparable parks, and are subject to prior approval by Reclamation before they are placed into effect.

9. USE OF REVENUES

A. The Department shall maintain such accounting records as are necessary to satisfy the requirements of this Agreement. These accounting procedures shall identify revenues and expenses directly related to the Department's management of the Fish and Wildlife Area. These may include administrative costs and overhead charges.

B. "Revenues" as referred to in this Article shall mean receipts from recreation user fees charged by the Department at the Fish and Wildlife Area, or fees received from concession operations or use authorizations. Any revenues shall be deposited in accordance with Department law, provided that, at a minimum, equivalent appropriations and disbursements shall be made to cover annual operation, maintenance, and replacement costs associated with management of the Fish and Wildlife Area. Any revenues collected by the Department through recreation user fees

in excess of the Department's expenditures shall be paid to Reclamation within 90 days after the end of the Department's fiscal year. However, if so requested by the Department, Reclamation may direct the Department that such excess revenues are carried over for expenditure by the Department in subsequent years for the purpose of future development of the Fish and Wildlife Area in accordance with approved plans or the RMP. The Department is not required to charge fees; however, the Department may do so in accordance with the provisions established by this agreement.

C. Each year at the request of Reclamation, the Department shall furnish Reclamation an annual report of visitation and use for the previous year at the Fish and Wildlife Area. The Department shall furnish Reclamation any other information, including information necessary to complete an annual update to Reclamation's Recreation Use Data Report (RUDR), regarding its management, operation and maintenance activities as may be requested.

10. EXAMINATION OF RECORDS

The Comptroller General of the United States, or any duly authorized representatives, or the Secretary of the Interior, or duly authorized representatives, shall have access to and the right to examine any pertinent books, documents, papers, and records of the Department involving transactions related to this Agreement.

11. FACILITY DEVELOPMENT

A. It is the intent of Reclamation and the Department to develop and enhance the natural and fish and wildlife resources at the Fish and Wildlife Area as demands require and/or as fund availability permits. Site planning, facility construction, and resource enhancement will be accomplished in accordance with approved planning documents or the RMP on a mutually agreeable basis.

B. The Department shall be responsible for developing site plans, detailed drawings and construction specifications, for all facilities or improvements to be constructed under this Agreement, and shall submit them to Reclamation for its prior review and written approval. Said site plans shall be prepared in sufficient detail to show facility location and to permit an analysis of the development. All facilities shall be harmonious in form, line, color, and texture with the surrounding landscape. Any approval, disapproval, or requirements for modification of said plans and specifications by Reclamation shall be transmitted to the Department in writing.

C. No permanent buildings for human habitation will be installed in the Fish and Wildlife Area below elevation 1435.4 MSL. No sanitary facilities will be installed below elevation 1429.0 MSL.

D. In planning for projects, the Department shall allow sufficient time for Reclamation to comply with various environmental and cultural laws, regulations, policies and directives and standards that may have a bearing upon the proposed projects. Reclamation will be the lead Federal agency for compliance with these requirements. The Department shall furnish all

necessary data to Reclamation for this compliance. Cultural resource surveys or research which may be required shall be performed by persons or institutions holding valid permits from Reclamation to conduct such work. The cost of any required cultural resource investigations shall be borne by the Department. The Department must consult with Reclamation on each activity to determine a time frame for Reclamation to comply with this process. Work shall not start until the environmental/cultural resource compliance requirements are completed and the Department is so notified in writing by Reclamation.

12. LIABILITY OF CONTRACTORS AND PERMITTEES

A. The Department shall require all contractors and permittees to carry such public liability and property damage insurance as is customary among prudent operators of similar businesses or operations, or for such similar uses of Federal lands under comparable circumstances.

B. The Department shall require all contractors and permittees to assume full responsibility for any and all liability arising out of or in any way connected with their activities on or uses of Federal lands, and they shall agree to indemnify and save harmless the United States or its agents and assignees from any and all such liability.

C. The Department shall require all contractors and permittees to present current and accurate copies of said insurance policies to the United States, that the United States be identified as an additional insured, and that the insurance companies shall have no right of subrogation against the United States.

13. TITLE TO LAND, IMPROVEMENTS, AND RESTORATION

A. Reclamation makes no warranty as to title in the United States of the land and water areas made available to the Department under the terms of this Agreement.

B. Upon commencement of this Agreement, the Department shall keep a current and accurate inventory of such structures and improvements (including construction and/or purchase costs) at the Fish and Wildlife Area that were installed or constructed solely at its own expense or by a concessionaire. When requested, the Department shall provide Reclamation an inventory of such structures and improvements.

C. For a period of up to one hundred eighty (180) days after termination of this Agreement, or such longer period as may be determined by Reclamation, the Department may have the privilege of selling, salvaging, and/or removing those structures or facilities installed or constructed by the Department at its sole cost or expense, exclusive of those structures or facilities partially or fully paid from funds expended by Reclamation or any other Federally financed program. After the expiration of such period, title to all remaining such Department financed structures or facilities shall vest in the United States. The right to remove such structures or facilities shall include the obligation to restore the land occupied by such structures to its original condition as determined to be satisfactory to Reclamation.

14. REVIEW OF ADMINISTRATION

A. Reclamation may make inspections of the Fish and Wildlife Area at any time. However, Reclamation will provide the Department advance notification of its intentions in order to include the Department in such inspections.

B. The parties hereto will meet annually or more often if requested by either, to review and inspect the management, operation and maintenance of the Fish and Wildlife Area. The purpose of these reviews and inspections are to ensure that management, operation, and maintenance procedures are adequate and consistent with the purposes of this Agreement and to identify and correct deficiencies and problems. Said reviews will include, but are not necessarily limited to health and safety; appropriate use of Federal land, land interests and resources; and inspections of facilities and operations, including third party or commercial concessions or permits, and basic service contracts.

15. DEBRIS AND WASTE REMOVAL

The Department will provide litter control and trash removal in all areas of the Fish and Wildlife Area to the satisfaction of Reclamation and to the extent necessary to maintain the area in a safe and aesthetically acceptable condition suitable for public recreation use. The Department will properly dispose of all waste, discarded or abandoned items, and debris generated by its management, and operations and maintenance activities. Said waste, debris, etc. will be disposed of or recycled in a properly permitted disposal or recycling facility outside of the Project boundaries.

16. SAFETY AND UNAUTHORIZED USE

A. The Department will, within the limits of its authority, adopt and enforce rules and regulations for the public use of the Fish and Wildlife Area as are necessary and desirable: 1) for the preservation of law and order; 2) to protect the health and safety of persons using the area; and, 3) the use and protection of lands, facilities and resources.

B. Said rules and regulations will be consistent with applicable Federal regulations (including 43 CFR Part 423), state and local laws, rules and regulations, Executive Orders, and Reclamation policies currently in place or as may be adopted in the future. Where variations exist between 43 CFR Part 423 and Department law, 43 CFR Part 423 shall be the required standard; otherwise, the most stringent law, rule, regulation, Executive Order or Reclamation policy will be the required standard.

C. The Department will submit a copy of all proposed rules and regulations specific to the Cheney Wildlife Area to Reclamation for its review and concurrence before they are promulgated and posted. This article is not applicable to statewide rules and regulations.

D. The primary responsibility for identifying and preventing unauthorized uses or encroachment within the Fish and Wildlife Area belongs to the Department. The Department

will, in cooperation with Reclamation, take all reasonable measures necessary to identify, investigate, and resolve incidents of unauthorized land, resource, or public recreation facility use, or unauthorized encroachment. To the extent of its authority, the Department will take any legal action necessary to prevent or prosecute such unauthorized use. When appropriate, Reclamation will take legal action on its own behalf. Resolution of boundary disputes will be the responsibility of Reclamation. The Department will notify Reclamation's designated representative of boundary disputes or unauthorized incidents immediately upon discovery.

17. TERMINATION. This Agreement shall terminate and all rights and obligations of the Department hereunder shall cease:

A. At the end of the term of this Agreement; or,

B. The Department may terminate its obligations under this Agreement by giving Reclamation two (2) years advance written notice. If the Agreement is terminated as the result of such written notice, all rights and obligations of Department under this Agreement shall cease at the end of said period, and the Department shall promptly return all management control back to Reclamation on the given date. In the event the Department fails to provide Reclamation two (2) years advance written notice, the Department shall pay to Reclamation, annually in advance, the cost of operating and maintaining the Fish and Wildlife Area for two (2) consecutive years. Advance payment by the Department to Reclamation for the cost of operating and maintaining the Fish and Wildlife Area is contingent upon the appropriation or allotment of funds as stated in Article 27; or,

C. As provided for in Article 3.E; or,

D. Any Department activity on Federal lands deemed by an appealable final decision of a state or Federal District court to be illegal will be cause for immediate termination of this Agreement; or,

E. In the event Reclamation terminates as described in Article 18.C.

18. DEFAULT. If Reclamation finds that the Department has violated any portion(s) of this Agreement, Reclamation shall:

A. Provide written notice of the violation(s) to the Department. The Department will then have ninety (90) days after receipt of written notice to either correct the violation(s) or to submit a plan of action that commits the Department to the resolution of the violation(s).

B. In the event Reclamation determines any violation(s) constitutes an immediate or clear and present danger to the public's health, safety and welfare:

(1) Reclamation shall immediately notify the Department, in the most expeditious manner possible, of such violation(s) and such opportunity to correct as is warranted by the violation(s). Subsequently, written notice of the violation(s) will also be sent to the Department.

(2) In the event the Department fails to address any violation constituting an immediate or clear and present danger to the public's health, safety and welfare as directed by Reclamation,

Reclamation may, at its sole option, elect to immediately correct the violation(s). In such case, Reclamation shall bill the Department for all its costs for curing the violation(s).

C. If the Department has not cured or addressed the violation(s) to Reclamation's satisfaction by the end of the period of time pursuant to sub-article A, Reclamation shall notify the Department that it is in default of the terms of the Agreement. If the violation(s) are not addressed within thirty (30) calendar days from the date of the second notice, the Agreement, either in whole or in part, shall be terminated and the Department shall immediately vacate or remove any and all personal property from the Fish and Wildlife Area, provided that, if Reclamation makes a determination that said personal property is necessary for the future operation of the Fish and Wildlife Area, Reclamation may make an offer, subject to authorized appropriations, to the Department for the purchase of the personal property at fair market value. The Department is not obligated to accept said offer.

D. In the event Reclamation assumes management responsibilities for all or a portion of the area covered under this Agreement as a result of the Department's default, the Department shall pay Reclamation for Reclamation's cost of managing the Fish and Wildlife Area for the remaining term of this Agreement.

19. ACCIDENT REPORTING

A. The Department will investigate, or cooperate in the investigation by the agency having jurisdiction, any accident or incident at the Fish and Wildlife Area involving death, hazardous material spills, serious bodily injury that generates a threat of litigation or summons and complaint against either the Department or Reclamation, or property damage that generates a threat of litigation or summons and complaint against either the Department or Reclamation. The definition of serious bodily injury means "an injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent loss or impairment of the function of any bodily member or organ."

B. The Department will immediately report to Reclamation on the date the event occurs or is made known to the Department, any accident or incident at the Fish and Wildlife Area that results in death, hazardous material spills, serious bodily injury that generates a threat of litigation or summons and complaint against either the Department or Reclamation, or property damage that generates a threat of litigation or summons and complaint against either the Department or Reclamation. In case of the above types of incident, the Department shall promptly provide Reclamation with copies of any written reports the Department prepares or obtains that describe the nature of the death, spill, injury, or damage, the date of occurrence, the cause, or the estimated costs of repair. Hazardous Material Spills will also be reported to the appropriate agencies as required by Federal, state, and local laws, rules, and regulations as well as to Reclamation.

20. VARIATION IN RESERVOIR WATER LEVEL. Reclamation reserves the right to vary the reservoir water level as necessary for Project purposes. Reclamation will, to the extent reasonably practicable, provide timely notice to the Department of any special or emergency

increases or decreases in water level that would adversely affect public recreation facilities and public use of the Fish and Wildlife Area. The Department agrees that Reclamation shall not be held responsible to the Department or any concessionaires or permittees for losses or damages, either financial (lost revenues, incomes, profits, etc.) or to fixed assets or personal property (docks, boat launch ramps, buoys, buildings, materials, etc.) incurred during the construction, operation or maintenance of Cheney Dam and Reservoir.

21. CONSUMPTIVE USE OF WATER BY DEPARTMENT

A. The Department may, subject to Kansas water law and water availability, and Reclamation approval, use water from reservoir supplies as may have been retained or acquired for the operation of wildlife areas at the Fish and Wildlife Area.

B. When the Department furnishes water to the public, it will furnish only potable drinking water which meets appropriate Federal, State, and local health standards. Reclamation does not warrant the quality of reservoir water as to its suitability either for recreation, domestic purposes or for human consumption.

C. The Department may acquire wells or other potable water supplies from commercial sources; and Reclamation may require the Department to obtain a permit for water withdrawal at the Reservoir for the Fish and Wildlife Area. Said water, wells, water supplies, or water permits, except from commercial water sources, will be obtained in the name of the United States and will be retained for the use for which it was obtained. The costs associated with implementation of this Article will be an operational expense of the Department, pursuant to this Agreement.

D. If water from the reservoir is used, a report of the total water used for the previous calendar year will be furnished to Reclamation March 1 of each year.

22. CERTIFICATION OF NONSEGREGATED FACILITIES

A. The Department certifies that it does not maintain or provide for its employees any segregated facility at any of its establishments, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Department certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

B. The Department agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Agreement. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, public recreation and entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

C. The Department shall post the following notice in such a manner where any Facility is available so as to insure that its contents will be conspicuous to any person seeking employment or use of any Facility.

NOTICE

THIS IS A FACILITY OPERATED IN AN AREA UNDER THE
JURISDICTION OF THE UNITED STATES DEPARTMENT OF THE
INTERIOR.

NO DISCRIMINATION BY SEGREGATION OR OTHER MEANS IN
FURNISHING OF ACCOMMODATIONS, FACILITIES, SERVICES, OR
PRIVILEGES ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR
NATIONAL ORIGIN IS PERMITTED IN THE USE OF THIS FACILITY.

VIOLATIONS OF THIS PROHIBITION ARE PUNISHABLE BY FINE,
IMPRISONMENT, OR BOTH. COMPLAINTS OF VIOLATIONS OF THIS
PROHIBITION SHOULD BE ADDRESSED TO THE UNITED STATES
DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20240.

D. The Department agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certification in its files.

NOTE: The penalty for making false statements in offers is prescribed in 17 U.S.C. 1001.

23. CONSTRUCTION MATERIALS AND MINING. There is reserved to Reclamation the right to remove from the Fish and Wildlife Area any and all materials necessary for construction, operation, and maintenance of the Project works and facilities; the right to prospect for, extract, and carry on the development for oil, gas, coal, and other minerals; and, the right to issue leases or permits to prospect for oil, gas, or other minerals on said lands under the Act of February 25, 1920 (41 Stat. 437) and acts amendatory thereof or supplementary thereto, and the Act of August 7, 1947 (61 Stat. 913). Reclamation will consult with the Department and will give due consideration to the Department's interest concerning any proposal prior to the exercise of these rights within the Fish and Wildlife Area.

24. RISK – DAMAGES

A. The Department shall hold harmless Reclamation and the City of Wichita, and their officers, agents, and employees, from legal liability for damages of any nature whatsoever arising out of any actions or omissions by the Department, its officers, agents and employees, connected with the development, management, operation, maintenance or use by anyone of a public recreational facility at the Fish and Wildlife Area where such liability is caused by an error or omission of the Department, its officers, agents or employees. The Department's liability under this section shall be limited to the fullest extent permitted by the laws of the State of Kansas or other applicable laws.

B. Within thirty (30) days of receipt by either party of any claim for liability arising from actions within the scope of this Agreement, the party receiving the claim shall notify the other party of such claim and provide a copy of the claim to the other party, if it is in written form. Nothing in this Article shall be construed to limit the right of either party to assert such affirmative defenses and file such cross complaints as may be appropriate in relation to any claim affecting the liability of such party.

C. Reclamation shall not be held responsible to the Department or any concessionaires, permittees, contractors, etc., for losses either financial or to fixed assets, incurred during the authorized operation of the Reservoir or in the event of closure due to national security or emergency purposes. If Reclamation is negligent in its operation of the Reservoir the scope and limitations for liability is governed by the Federal Tort Claims Act.

25. RESOURCE PROTECTION

A. Environmental Protection.

(1) The Department shall comply with the provisions of all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, pertaining to the protection of the public, employees, natural and cultural resources within the Fish and Wildlife Area.

B. Hazardous Materials/Waste Management.

(1) The Department shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions in effect now or as may be promulgated or enacted during the term of this Agreement concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, water or facilities owned by the United States of America or administered by Reclamation.

(2) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.

(3) The design, construction and operation of the facilities and the provision of services under this Agreement shall be performed in a manner that prevents, identifies and reduces pollution at the source.

(4) The Department may not allow contamination or pollution of Federal lands, waters or facilities for which the Department has the responsibility for the care, operation, and maintenance, and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include, but are not limited to, hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial/commercial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

(5) The Department shall develop appropriate emergency response plans to prevent contamination of lands, water or facilities at the Fish and Wildlife Area by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial/commercial waste, petroleum

products, mine tailings, mineral salts, misused pesticides, pesticide containers or any other pollutants.

(6) In the event of such contamination of lands, water or facilities at the Fish and Wildlife Area, the Department shall immediately implement the emergency response plans and take steps to contain, control, and clean-up such contamination. The Department is not responsible, financially or otherwise, for correcting damages, pollution, or deterioration caused by Reclamation or an outside third party.

(7) The Department's operation, maintenance, acquisition and purchasing activities will, to the extent practical, promote the use of environmentally preferable products, including materials and supplies with recycled content, and will avoid or minimize the quantity of toxic and hazardous materials entering the waste stream.

(8) Any intentional violation of any of the provisions of this Article by the Department shall constitute grounds for termination of this Agreement, and shall make the Department liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of a violation. Such violations may require immediate corrective action by the Department. The Department shall remain, after termination of this Agreement, liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(9) At the Department's request, Reclamation agrees to provide information necessary for the Department, using reasonable diligence, to comply with the provisions of this section.

(10) The Department will include the provisions of this Article in any third party or concession contracts or agreements pursuant to this Agreement.

(11) The Department agrees to develop, operate in accordance with, and carry out an environmental monitoring program(s), as may be appropriate, to ensure that the Fish and Wildlife Area resources affected by permitted or contracted activities are not impaired.

(12) The Department agrees to include the above provisions in any subcontracts or third party contracts it may enter into pursuant to this Agreement.

C. Pest Control

(1) The Department shall not permit the use of any pesticides (to include herbicides, fungicides, etc.) on Federal lands without prior written approval by Reclamation.

(2) All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with State requirements and such records shall be furnished to Reclamation not later than five (5) working days after any application of a pesticide.

(3) Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.

(4) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter the Reservoir, storm drains, sewers, or other non-target areas.

(5) The Department shall initiate any necessary measures for containment and clean up of pesticide spills. Spills shall be reported to Reclamation within twenty-four (24) hours with full details of the spill and the actions taken.

(6) Aerial application of pesticides is prohibited without prior written approval by Reclamation.

(7) The Department agrees to include the above provisions in any subcontracts or third party contracts it may enter into pursuant to this Agreement.

D. Historic, Cultural and Archeological Values

(1) The Department shall be particularly alert in any construction operations to take all reasonable and necessary precautions to protect and preserve any and all antiquities or other objects of archaeological, paleontological, cultural, historic, or scientific interest on Federal lands. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and other artifacts. Should such sites or objects, or evidence of sites or objects, be discovered, the Department shall immediately suspend any and all work involving the area in question, make reasonable effort to protect such a discovery, and advise Reclamation of the existence of such discovery.

(2) The Department shall immediately provide an oral notification to Reclamation of the discovery of human remains on Reclamation lands. The Department shall forward a written report of their findings to Reclamation within 48 hours by certified mail. The Department shall cease activity, stabilize, and protect such discoveries until authorized to proceed by Reclamation. Protective and mitigative measures specified by Reclamation shall be the responsibility of the Department.

(3) Reclamation shall promptly have the area inspected to determine its historical significance and the appropriate actions to follow (salvage, test excavation, etc., and resumption of construction). Cost of any salvage work will be borne by Reclamation. All objects salvaged from Federal lands are property of the United States Government and will be turned over to Reclamation for disposition.

26. NOTICES

A. Any notice, demand, or request required or authorized by this Agreement to be given or made to or upon Reclamation, shall be deemed properly given or made if delivered by mail, postage prepaid, to the Area Manager, Bureau of Reclamation, 5316 HWY 290 W, Suite 110, Austin, Texas 78735-8931.

B. Any notice, demand, or request required or authorized by this Agreement to be given or made to or upon the Department shall be properly given or made if delivered by mail, postage-prepaid, to the Secretary, Kansas Department of Wildlife, Parks and Tourism, Cheney Wildlife Area, 21514 S. Yoder Rd., Pretty Prairie, Kansas 67570.

C. The designation of the person to or upon who any notice, demand, or request is to be given or made, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this section for other notices.

27. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure of any money and the performance of any work by Reclamation or by the Department, as provided for by the terms of this Agreement, which may require appropriation of money by the respective legislative bodies, or the allotment of funds, shall be contingent upon such appropriation or allotment being made. The failure of either of such legislative bodies to appropriate funds or the absence of any allotment of funds shall not impose any liability on either of the parties hereto.

28. MODIFICATION OF AGREEMENT

A. This Agreement may be modified, amended, or superseded at any time during its term upon mutual written agreement by the parties hereto.

B. If any portion of this Agreement is rendered null and void as a result of applicable laws, regulations, Executive Orders, Reclamation Policy, court rulings, etc., all remaining portions of the Agreement will remain in full force and effect, provided the voided portion or portions do not affect the primary purposes of this Agreement.

29. OFFICIALS OR EMPLOYEES NOT TO BENEFIT.

No member or delegate to Congress or Resident Commissioner, and no officer, agent, or employee of the Department of the Interior, or official or employee of the Department shall be admitted to any share or part of this Agreement, or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Agreement if made with a company or corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written as described on page three.

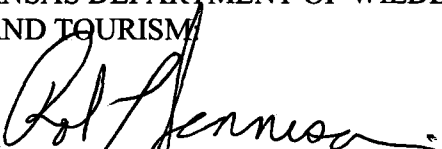
BUREAU OF RECLAMATION

CONCUR:
CITY OF WICHITA, KANSAS


By: _____
Area Manager, Oklahoma-Texas Area Office

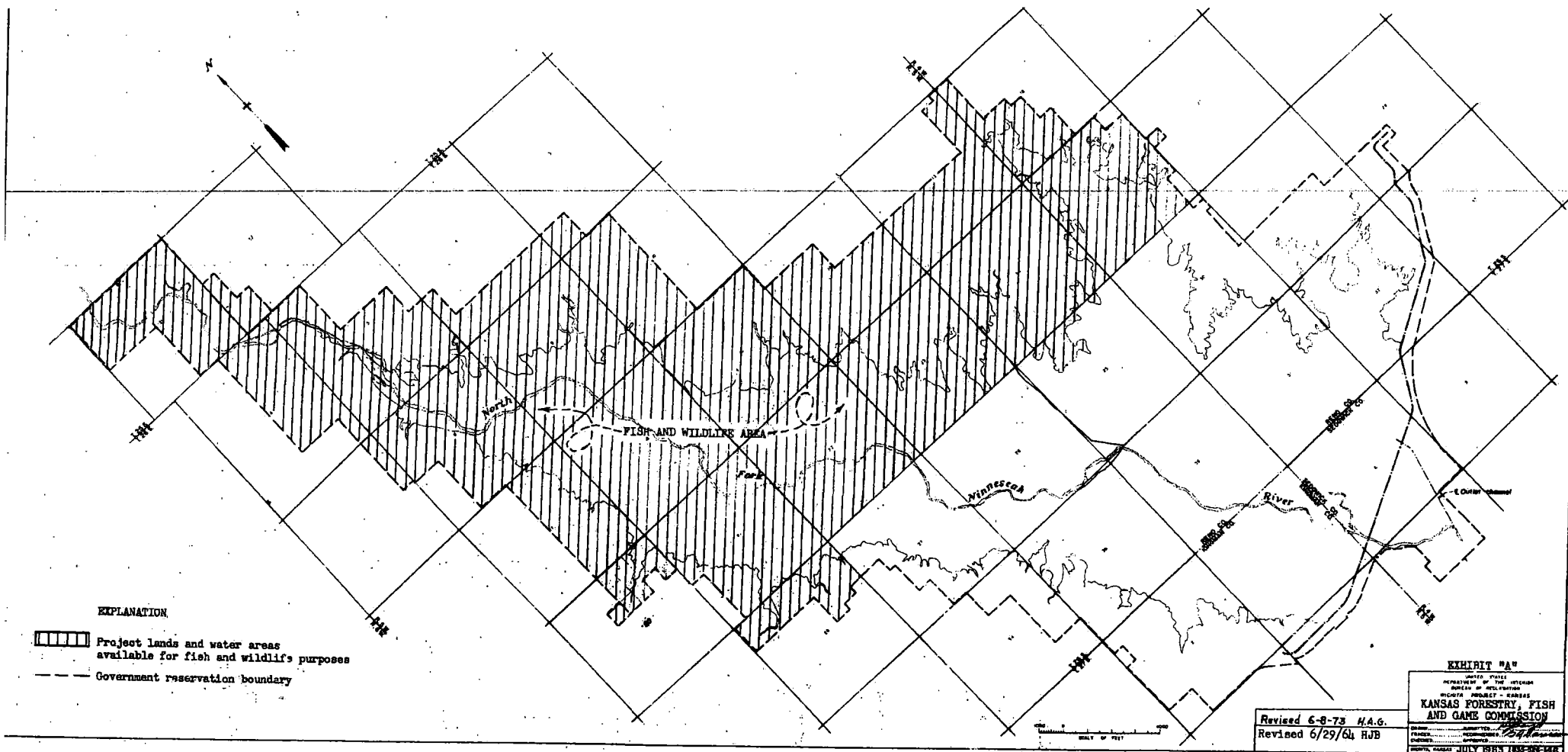
By: _____
Mayor, City of Wichita, Kansas

KANSAS DEPARTMENT OF WILDLIFE, PARKS
AND TOURISM



By: 
Secretary, Kansas Department of Wildlife, Parks and Tourism

APPROVED AS TO FORM:


GARY E. REBENSTORF
DIRECTOR OF LAW



EXPLANATION

-  Project lands and water areas available for fish and wildlife purposes
 Government reservation boundary

Revised 6-8-73 H.A.G.
 Revised 6/29/64 HJB

EXHIBIT "A"
 UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 MOORE PROJECT - KANSAS
 KANSAS FORESTRY, FISH
 AND GAME COMMISSION
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]
 MOORE, KANSAS, JULY 1964

EXHIBIT B

EQUAL OPPORTUNITY REQUIREMENTS

During the performance of this Agreement, the Department agrees as follows:

- a) The Department shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The Department shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Department agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this Equal Opportunity clause.
- b) The Department shall, in all solicitations or advertisements for employees placed by or in behalf of the Department; state that all qualified applicants shall receive consideration for employment without regard to race, color, age, religion, sex, or national origin.
- c) The Department shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the United States, advising the labor union or workers representative of the Department's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) The Department shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor regarding equal employment opportunities.
- e) The Department shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the United States Secretary of Labor, or pursuant, thereto, and shall permit access to its books, records, and accounts by the United States and its Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and in the event of the Department's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, by the United States and the Department may be declared ineligible for further Government Agreements in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the

United Departments Secretary of Labor, or as otherwise. The Department shall include the provisions of paragraphs a) through g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding

EXHIBIT C

TITLE VI, CIVIL RIGHTS ACT OF 1964

- a) The Department agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964,(78 Stat. 241), and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Department receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this Management Agreement.
- b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Department by the United States, this assurance obligates the Department; or in the case of any transfer of such property or structure is used for a purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance obligates the Department for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Department for the period during which the Federal financial assistance is extended to it by the United States.
- c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Department by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which was approved before such date. The Department recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Department, its successors, transferees, and assignees.

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
JUNE 2014

COMMODITY TITLE	EXPIRATION	VENDOR NAME	DEPARTMENT	ORIGINAL	RENEWAL OPTIONS
	DATE			CONTRACT DATES	REMAINING
Architectural Services (On-Call)	6/30/2015	Spangenberg Phillips Tice, LLC DBA Spangenberg Phillips Tice Architecture	Public Works & Utilities	7/1/2012 - 6/30/2013	Last option
Architectural Services (On-Call)	6/30/2015	Law/Kingdon Inc. DBA Law Kingdon Architecture	Public Works & Utilities	7/1/2012 - 6/30/2013	Last option
Cowskin Creek Wetlands Monitoring Services	6/30/2015	Burns & McDonnell	Public Works & Utilities	7/1/2010 - 6/30/2011	Last option
Drug Treatment for Drug Court (Out Patient)	6/30/2014	Sedgwick County, Kansas dba Comcare Addiction Treatment Services	Municipal Court	7/1/2012 - 6/30/2013	3 - 1 year options
Employee Health & Benefit Consulting Services	6/31/2015	IMA, Inc.	Finance	7/1/2013 - 6/30/2014	1-6 month option, then then 3-1 year options
Engineering & Management Bond Services	6/30/2015	Burns & McDonnell	Public Works & Utilities	6/26/2013 - 6/30/2014	Last option
Hardware Maintenance & Support Services	6/30/2015	SMS Systems Maintenance Services, Inc.	IT / IS	6/26/2012 - 6/30/2013	2 - 1 year options
Industrial Pretreatment Wastewater Sampling	6/30/2015	A & E Analytical Laboratory, Inc.	Public Works & Utilities	7/10/2012 - 6/30/2013	Last option
Internet and Digital Connection Services Branch Libraries	6/30/2015	Hubris Communications, Inc.	Library	7/1/2013 - 6/30/2014	3 - 1 year options
Janitorial Services &/Or Floor Cleaning Services for Branch Libraries	6/30/2015	Stephens Industries Inc dba Air Capital Building Maintenance Company	Library	7/1/2013 - 6/30/2014	3 - 1 year options
Maintenance Service on Power Files	6/30/2014	Records Retrieval Systems	Police	7/1/2002 - 6/30/2003	Annual basis
Medical Bill Review Services	6/30/2014	CorVel Corporation	Finance	4/1/2008 - 3/31/2009	6 month extension
Methane (Surface) Monitoring & Reporting at Brooks Landfill	6/30/2015	SCS Engineers DBA SCS Aquaterra	Public Works & Utilities	8/1/2010 - 6/30/2011	Last option
Paint - White and Yellow Pavement Marking	6/30/2015	Ennis Paint, Inc. dba Ennis Traffic Safety Solutions	Public Works & Utilities	7/1/2012 - 6/30/2013	Last option
Paint, Exterior	6/30/2015	PPG Architectural Finishes, Inc. dba Porter Paints	Housing & Community Services	7/1/2012 - 6/30/2013	Last option
Plumbing Repair Services (commercial and residential)	6/30/2015	The Waldinger Corporation	Various	7/1/2013 - 6/30/2014	1 - 1 year option
Public Internet Services at Lionel Alford Regional and Central Branch Libraries	6/30/2015	Network Tool and Die Company, Inc.	Library	7/1/2012 - 6/30/2013	2 - 1 year options
Root Control Herbicide (Foaming)	6/30/2015	Dukes Sales & Service	Public Works & Utilities	7/1/2012 - 6/30/2013	Last option
Structural Engineering On Call Services	6/30/2015	Mauler Engineering, LLC	Airport	6/26/2012 - 6/30/2013	Last option
Traffic Signs	6/30/2015	Vulcan Signs	Public Works & Utilities	7/1/2012 - 6/30/2013	Last option
Transcription Services	6/30/2015	Net Transcripts, Inc.	Police	7/10/2012 - 6/30/2013	Last option
Uniforms - Fire Department	6/30/2014	Baysinger Police Supply, Inc.	Fire	7/21/2011 - 6/30/2012	Last option
Uniforms- Rental of Shop Uniforms-Wichita Transit	6/30/2015	Aramark Uniform & Career Apparel LLC DBA Aramark Uniform Services	Transit	7/1/2012 - 6/30/2013	Last option
Veterinary Consulting Services	6/30/2015	RL Kutter DVM, PA dba Kutter Pet Care Center	Police	7/1/2012 - 6/30/2013	Last option
Waterworks Fittings	6/30/2015	Wichita Winwater Works Company	Public Works & Utilities	7/1/2013 - 6/30/2014	1 - 1 year option
Waterworks Materials	6/30/2015	Wichita Winwater Works Company	Public Works & Utilities	7/23/2013 - 6/30/2014	1 - 1 year option

**PROFESSIONAL CONTRACTS UNDER \$25,000
JUNE 2014**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		

**ANNUAL MAINTENANCE CONTRACTS OVER \$25,000
DIRECT PURCHASE ORDERS FOR JUNE 2014**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Progressive Solutions Inc.	DP440385	Software Maintenance/Support	\$44,265.82		

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: Funding for Improvements to the Old Lawrence Road Bridge (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the revised budget and adopt the resolution.

Background: On February 4, 2014, the City Council approved a design concept and revised budget for improvements to the Old Lawrence Road Bridge. The bridge is structurally deficient and needs to be replaced. Final design plans are essentially complete and construction is expected to begin in August 2014.

Analysis: Proposed improvements include replacing the existing structure with a new reinforced concrete box bridge, including 11foot travel lanes, three foot shoulders, and improved side slopes of the ditches.

Financial Considerations: The existing approved budget is \$75,000 funded by General Obligation (GO) bonds. The 2011-2020 Adopted Capital Improvement Program (CIP) has \$225,000 available for construction in 2015, of which staff recommends initiating \$200,000. Federal construction funding of \$320,000 is available through the Transportation Improvement Program (TIP) in 2014. The total revised budget would be \$595,000 and would allow for payment of TIP fees, Engineering staff and administration costs for oversight, and construction costs.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the revised budget, adopt the resolution, and authorize all necessary signatures for the acquisition and granting of easements, utility relocation agreements, and all required permits.

Attachments: Budget sheet and resolution.

Project Request

☒ CIP ☐ Non-CIP

CIP YEAR: 2015

CIP #: _____

☐ NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities

DIVISION: Engineering

RESOLUTION/ORDINANCE #: 14-

FUND: 400 Street Improvements

SUBFUND: 415 Bridges

ENGINEERING REFERENCE #: 472-85116

COUNCIL DISTRICT: 06 Council District 6

DATE COUNCIL APPROVED: Jul 8, 2014

REQUEST DATE: _____

PROJECT #: 249145

PROJECT TITLE: Old Lawrence Road Bridge

PROJECT DETAIL #: 01

PROJECT DETAIL DESCRIPTION: Old Lawrence Road Bridge

OCA #: 715729

OCA TITLE: Old Lawrence Road Bridge

PERSON COMPLETING FORM: Joni Chamberlain

PHONE #: 268-4548

PROJECT MANAGER: Mike Armour

PHONE #: 268-4598

☐ NEW BUDGET

☒ REVISED BUDGET

Revenue Object Level 3 Original Budget Adjustment New Budget

9720 G.O. Bonds	\$75,000.00	\$200,000.00	\$275,000.00
8000 Federal	\$0.00	\$320,000.00	\$320,000.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$75,000.00	\$520,000.00	\$595,000.00

Expense Object Level 3

2999 Contractuals	\$75,000.00	\$520,000.00	\$595,000.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Total Expense:	\$75,000.00	\$520,000.00	\$595,000.00

NOTES:

Federal funding is from the 2014 TIP through WAMPO

SIGNATURES REQUIRED

DIVISION HEAD: _____

DEPARTMENT HEAD: _____

BUDGET OFFICER: _____

CITY MANAGER: _____

Print Form

DATE: 06/17/14

DATE: _____

DATE: _____

DATE: _____

RESOLUTION NO. 14-177

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, , pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

Design, acquisition of right-of-way, and construction of improvements to the Old Lawrence Road Bridge

(collectively, the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of \$595,000 in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. Project Financing. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the “Bonds”). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 8, 2014.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: Sanitary Sewer Extension to Serve Menlo Park Addition (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the petition and adopt the resolution.

Background: The signature on the petition represents 100% of the resident owners and 100% of the improvement district area. The petition is valid per Kansas Statute 12-6a01.

Analysis: The project will extend a sewer lateral from the existing sanitary sewer line on the west to serve Lot 36 and the north 38 feet of Lot 38 in Menlo Park Addition (north of 23rd Street North, east of Fairview).

Financial Considerations: The estimated cost of the sanitary sewer extension is \$14,000, with 100% being assessed to the improvement district on a fractional basis.

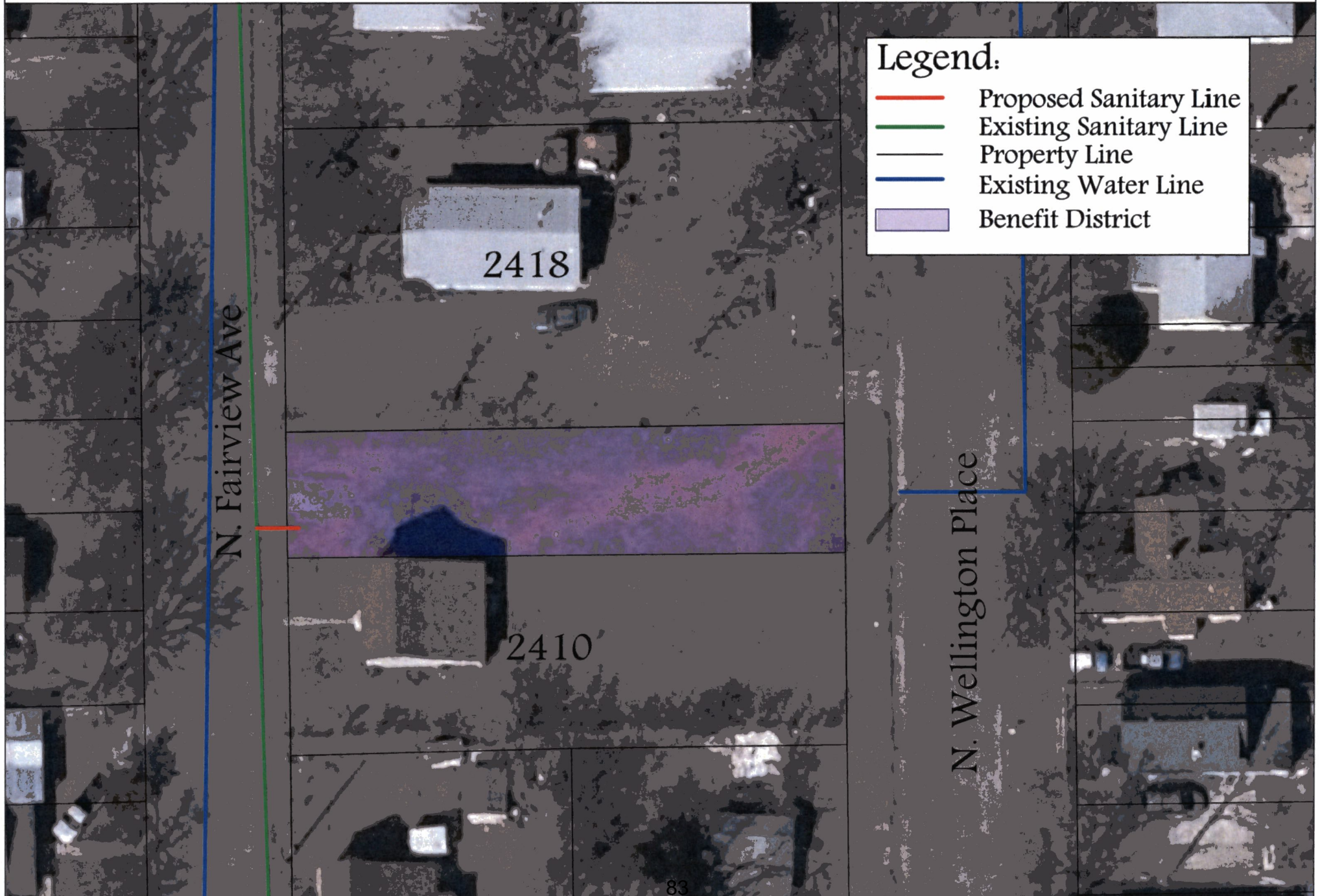
Legal Considerations: The petition and resolution have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the resolution, and authorize all necessary signatures for the acquisition and granting of easements, utility relocation agreements, and all required permits.

Attachments: Map, petition, budget sheet, and resolution.



SS Improvements for N. Fairview Ave



☐ CIP ☒ Non-CIP

☒ NEIGHBORHOOD IMPROVEMENT

ORDERED BY WCC

PETITION

PETITION PERCENTAGE: 100

DEPARTMENT: 13 Public Works & Utilities

DIVISION: Engineering

RESOLUTION/ORDINANCE #: 14-

FUND: 480 Sewer Improvements N.I.

SUBFUND: 480 Sanitary Sewers N.I.

ENGINEERING REFERENCE #: 468-84968

COUNCIL DISTRICT: 06 Council District 6

DATE COUNCIL APPROVED: Jul 8, 2014

REQUEST DATE:

PROJECT # : 480061

PROJECT TITLE: Lat 40, Dist T, SS # 20 (Menlo Park)

PROJECT DETAIL # : 01

PROJECT DETAIL DESCRIPTION: Lat 40, Dist T, SS # 20 (Menlo Park)

OCA #: 744369

OCA TITLE: Lat 40, Dist T, SS # 20 (Menlo Park)

PERSON COMPLETING FORM: Joni Chamberlain

PHONE #: 268-4548

PROJECT MANAGER: Rebecca Greif

PHONE #: 268-4505

☒ NEW BUDGET ☐ REVISED BUDGET

REVENUE

EXPENSE

Object Level 3	Budget	Object Level 3	Budget
9730 S.A. Bonds	\$14,000.00	2999 Contractuals	\$14,000.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
REVENUE TOTAL:	\$14,000.00	EXPENSE TOTAL:	\$14,000.00

NOTES:

SIGNATURES REQUIRED

DIVISION HEAD:

DEPARTMENT HEAD:

BUDGET OFFICER:

CITY MANAGER:

Print Form

DATE: _____

DATE:

DATE:

DATE:

SANITARY SEWER PETITION

RECEIVED

JUN 9 '14

To the Mayor and City Council
Wichita, Kansas

CITY CLERK OFFICE

Dear Council Members:

Lateral 40, Dist T, SS#20

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Menlo Park Addition

468-84968

Lot 36 & N 38 Feet Lot 38 Water St.

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

- (a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the foregoing improvements being **Fourteen Thousand Dollars (\$14,000)**, exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. The actual assessed cost shall not exceed the estimated assessed cost by more than 10%, exclusive of the cost of interest on borrowed money. If, at the time the City Engineer bids or is ready to bid the project for construction it appears that the final cost will exceed this amount, this project will be abandoned and rescinded by the City Council. In order to re-establish the project, a new petition with an increased budget must be circulated and submitted.

This petition shall be considered null and void if it is not filed with the City Clerk within one year of the preparation date of **June 9, 2014**.

- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a **Fractional** basis with the tract listed above paying the total cost assessed to the improvement district.


Where the ownership of a single tract as described above may be divided into two or more parcels in the future, the assessment to the original tract so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.
- (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.


4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>MENLO PARK ADD.</u> LOT 36 & N 8 FT LOT 38 WATER ST.	CHRISTIAN ESTUARDO MARINO 	6-9-14

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.



Name


704 S Longbrach Dr
Address Maize KS 67101

316-519-2776

Telephone Number

Sworn to and subscribed before me this 9 day of June, 2014.





Deputy City Clerk

132019

First Published in the Wichita Eagle July 11, 2014

RESOLUTION NO. 14-178

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 40, DISTRICT T, SANITARY SEWER NO. 20 (NORTH OF 23RD STREET NORTH, EAST OF FAIRVIEW AVENUE) 468-84968** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF **LATERAL 40, DISTRICT T, SANITARY SEWER NO. 20 (NORTH OF 23RD STREET NORTH, EAST OF FAIRVIEW AVENUE) 468-84968** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct **Lateral 40, District T, Sanitary Sewer No. 20 (north of 23rd Street North, east of Fairview Avenue) 468-84968**.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Fourteen Thousand Dollars (\$14,000)** exclusive of interest on financing and administrative and financing costs, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 9, 2014** exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MENLO PARK ADDITION

Lot 36 and North 38 Feet Lot 38 Water St.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis:

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis with the tract listed above paying the total cost assessed to the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 8th day of July, 2014.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council Members

SUBJECT: Nuisance Abatement Assessments, Cutting Weeds (Districts I and II)

INITIATED BY: Metropolitan Area Building and Construction Department

AGENDA: Consent

Recommendation: Approve the assessments and place the ordinance on first reading.

Background: The Metropolitan Area Building and Construction Department (MABCD) supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code. State law and local ordinances allow the City to clean up private properties that are in violation of environmental standards after proper notification is sent to the responsible party. A private contractor performs the work, and the MABCD bills the cost to the property owner.

Analysis: State law and City ordinance allow placement of the mowing costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and the MABCD is requesting permission for the Department of Finance to process the necessary special assessments.

Financial Considerations: Nuisance abatement contractors are paid through budgeted appropriations from the City's General Fund. Owners of abated property are billed for the contractual costs of the abatement, plus an additional administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property. Nuisance abatements to be placed on special assessments are listed on the attached property list.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the proposed assessments and place the ordinance on first reading.

Attachments: Property List for Special Assessments and ordinance.

Geo Code #	PIN #	ADDRESS / LOCATION	AMOUNT	DISTRICT
C 53256	00470904	V/L SE Corner 34th & Woodlawn	\$140.00	1
C 56386	00498108	V/L N of 8714 E Millrun	\$140.00	2
C 24668	00170104	2320 N Volutsia Ave	\$149.00	1
C 13833	00159567	1409 Yale Blvd	\$140.00	1
C 24646	00170080	V/L W of 2221 N Chautauqua	\$140.00	1

Published in the Wichita Eagle on **July 18, 2014**

ORDINANCE NO. 49-779

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR
THE COST OF **CUTTING WEEDS** IN THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF
WICHITA, KANSAS:

SECTION 1. That the sums set opposite the following lots, tracts, pieces and parcels of land or ground, herein specified, be and the same are hereby levied to pay the cost of cutting weeds in the City of Wichita, Kansas in the year 2014:

Legal of Parcel in Benefit District	Assessment
LOT 9 BLOCK B YALE HEIGHTS ADD.	140.00
W 185 FT LOT 58 EXC W 30 FT FOR ST HILLSIDE GARDENS ADD	140.00
LOT 80 EXC E 30 FT FOR ST. HILLSIDE GARDENS ADD.	149.00
RESERVE A CORNEJO NORTH ADD.	140.00
LOT 4 BLOCK 5 SAWMILL CREEK ADD.	140.00

SECTION 2. This ordinance shall take effect and be in force from and after its passage by the city council and publication once in the official City newspaper.

ADOPTED at Wichita, Kansas, this **15th** day of **July, 2014**.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form

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Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council Members

SUBJECT: Nuisance Abatement Assessments, Lot Clean Up (Districts III, IV and VI)

INITIATED BY: Metropolitan Area Building and Construction Department

AGENDA: Consent

Recommendation: Approve the assessments and place the ordinance on first reading.

Background: The Metropolitan Area Building and Construction Department (MABCD) supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code. State law and local ordinance allow the City to clean-up private properties that are in violation of environmental standards after proper notification is sent to the responsible party. A private contractor performs the work, and the MABCD bills the cost to the property owner.

Analysis: State law and City ordinance allow placement of the lot clean-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and the MABCD is requesting permission for the Department of Finance to process the necessary special assessments.

Financial Considerations: Nuisance abatement contractors are paid through budgeted appropriations from the City's General Fund. Owners of abated property are billed for the contractual costs of the abatement, plus an additional administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property. Nuisance abatements to be placed on special assessments are listed on the attached property list.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the proposed assessment and place the ordinance on first reading.

Attachments: Property List for Special Assessments and ordinance.

PIN #	Geo Code#	Address / Location	Amount	District #
00124907	B 05715	1614 S Santa Fe	\$1,058.70	3
00103552	A 04018	1002 N Coolidge	\$540.55	6
00225594	D 247910001	4403 S Dodge Ave	\$478.60	4

Published in the Wichita Eagle on **July 18, 2014**

ORDINANCE NO. 49-780

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF ABATING CERTAIN PUBLIC HEALTH NUISANCES (**LOT CLEAN UP**) UNDER THE PROVISION OF SECTION 7.40.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

Legal of Parcel in Benefit District	Assessment
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W 101 FT LOTS 98-100 COOLIDGE AVE. RIVERSIDE ADD.	540.55
LOTS 14-16 BLOCK 3 ALLEN & SMITH'S ADD.	1058.70
E1/2 LOT 3 BLOCK C VILM GARDENS 2ND. ADD.	478.60

SECTION 2. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **15th day of July, 2014**.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**City of Wichita
City Council Meeting
July 8, 2014**

TO: Mayor and City Council

SUBJECT: Resolution Authorizing General Obligation Bonds (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Adopt the resolution authorizing general obligation bonds.

Background: Wichita Transit was awarded grant KS-90-X137 in April of 2011. The grant was awarded for capital items, including buses in the amount of \$1,320,000. In June 2013, Wichita Transit amended the grant to increase the amount available for buses to \$7,858,650. Four buses were purchased in March of 2013 and 10 were purchased in May of this year. Separate bonding resolutions were approved for each purchase. The remaining funds available in KS-90-X137 will be for the purchase of six buses to be ordered in July and delivered in the summer of 2015.

Analysis: The proposed bonding resolution rescinds and replaces the two bonding resolutions that were approved at the time of the two previous bus purchases, and the resolution increases the total amount to the budgeted amount for bus purchases in grant KS-90-X137:

- Bonding Resolution 11-210 for \$288,022 approved on August 26, 2011 will be rescinded
- Bonding Resolution 13-071 for \$3,939,070 approved on April 23, 2013 will be rescinded
- The attached Bonding Resolution will replace the two resolutions being rescinded and authorize the issuance of general obligation bonds for the total amount available for bus purchases in grant KS-90-X137. The total amount available for bus purchases includes the amounts spent on the previous two bus purchases and the amount remaining for bus purchase.

Financial Consideration: The total amount available for the purchase of buses in grant KS-90-X137 is \$7,858,650. The Federal share is \$6,522,679, and the local match of \$1,335,071 will be provided through the issuance of general obligation bonds. The amount of \$4,768,299.91 has already been expended on bus purchases and the Federal Transit Administration has reimbursed the City of Wichita for the federal portion of the purchases.

Legal Consideration: The Law Department has reviewed and approved the resolution as to form.

Recommendation/Actions: It is recommended that the City Council adopt the resolution and authorize the necessary signatures.

Attachments: Bonding Resolution

RESOLUTION NO. 14-185

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, , pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

Wichita Transit Bus Purchase KS-90-X137-01

(the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the Project be acquired at an estimated cost of **\$7,858,650** in accordance with plans and specifications therefor prepared under the direction of the Transit Director and approved by the Governing Body; said plans and specifications to be placed on file in the Transit offices.

Section 2. Project Financing. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the “Bonds”). The Bonds may be issued to reimburse expenditures authorized by Resolution No. 13-071 or Resolution No. 11-210, respectively, made on or after the date which was 60 days before the respective dates of adoption of such Resolutions, and to reimburse additional expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

Section 4. Resolution No. 11-210 of the City of Wichita, Kansas, passed on August 23, 2011 and Resolution 13-071 of the City of Wichita, Kansas passed on April 23, 2013, are hereby rescinded.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 8, 2014.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

**City of Wichita
City Council Meeting
July 8, 2014**

TO: Mayor and City Council

SUBJECT: Procurement of Buses – Contract for Fixed Route Buses (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the contract to purchase up to 50 fixed route buses over a five year period with an option to purchase 10 additional buses from the Gillig LLC.

Background: Wichita Transit operates a fleet of 56 fixed route buses and trolleys. Over the next five years, Wichita Transit has thirty-five, 35-foot buses that are eligible for replacement. These vehicles have been included in Wichita Transit's fleet replacement schedule and the City's adopted capital improvement program. In addition, over this five year period, Wichita Transit will have the ability to expand its fleet based on future long range planning for the department.

Analysis: The useful life expectancy for a 35-foot or 40-foot transit bus has been established by the Federal Transit Administration (FTA) as 12 years. Replacement of buses that are beyond their useful life will result in better control over maintenance costs and improvement in service dependability. Over the next five years, 35 buses will be eligible for replacement. This five year procurement will allow the City to replace aging buses as funding becomes available and provide a mechanism to purchase additional vehicles to support expansion if funding is available.

Wichita Transit solicited proposals from qualified manufacturers interested in producing 35-foot and 40-foot low-floor transit quality buses utilizing new technology and meeting Americans with Disabilities Act (ADA) requirements. In addition, pricing for both diesel and compressed natural gas (CNG) engine types were specified providing the option if approved to proceed with purchasing either engine type in the future.

On May 23, 2014, Wichita Transit received two proposals, one from Gillig LLC and one from New Flyer of America. A Staff Screening and Selection Committee met on June 4, 2014 to review and screen the proposals submitted. Both companies were deemed suitable and qualified for the project and were granted interviews. Based on the technical qualifications, project understanding/presentation, approach/pricing and references each proposal was evaluated by the committee. The recommendation of Gillig LLC was made by the committee for the project primarily based on the firm's financial stability, its long term experience in building transit buses and the quality/detail of its proposal in meeting the specifications and pricing for each bus model.

Financial Consideration: The minimum and maximum total cost over the lifetime of the contract, based on size of bus and engine type ordered, is estimated at \$21,172,900 to \$23,760,450 respectively. The project cost would be funded with (FTA) Grant funds (83%) and local match funds (17%) obtained by selling bonds.

Legal Consideration: The City's Law Department has reviewed and approved this contract as to form.

Recommendation/Actions: It is recommended that the City Council approve the selection of Gillig LLC as the bus manufacturer and enter into contract for the purchase of buses over the next five years.

Attachments: COW and Gillig LLC - Contract for Fixed-Route Buses.

CONTRACT for FIXED-ROUTE BUSES

THIS CONTRACT entered into this 8TH day of July, 2014, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **GILLIG LLC** (Vendor Code Number 821255-001), whose principal office is at 25800 Clawiter Road, Hayward, CA , Telephone Number (510) 785-1500 hereinafter called "**VENDOR**".

WITNESSETH:

WHEREAS, the **CITY** has solicited bids for **Fixed-Route Buses** (Formal Proposal – FP440010) [Commodity Code Number 55615]; and

WHEREAS, **VENDOR** has submitted the bid most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services.** **VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP440010 [Commodity Code Number 55615] which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans, addenda and attached FTA required contract clauses, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP440010, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **VENDOR** the following **unit price** for **Fixed-Route Buses** for Formal Proposal – FP440010 [Commodity Code Number 55615], for Wichita Transit as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of May 23, 2014, and as approved by the City Council on July 8, 2014.

<u>Description</u>	<u>Unit Cost Per Each</u>
35 Foot Bus – Diesel Engine	\$394,931.00
40 Foot Bus – Diesel Engine	\$399,131.00
35 Foot Bus – CNG Engine	\$442,482.00
40 Foot Bus – CNG Engine	\$446,682.00
ITS System and Camera Upgrade	\$ 28,527.00

Billing Terms – Net Thirty (30) Days

Warranty Coverage:	Months	Miles
Full Coach.....	12	50,000
Body Structure.....	36	150,000
Corrosion & Structural Integrity...	144	500,000
Axle.....	60	Unlimited
Brake System.....	24	100,000
Radiator & Charge Air Cooler....	24	100,000
Engine.....	60	300,000
Starter.....	36	350,000
EMP Alternator.....	24	Unlimited
Air Compressor.....	24	Unlimited
Transmission.....	60	300,000
A/C Heating System.....	36	Unlimited
Wheelchair Ramp.....	24	Unlimited
Door Systems.....	12	Unlimited
Paint.....	36	150,000

Coverage ceases at the first expiration of the time or distance noted.

The Spare Parts/Diagnostics/Training Allowance for each bus order will be \$3,787.82 per bus.

3. **Term.** This contract shall be effective **July 8, 2014**. Expected quantity of buses to be ordered is 50 over a five year period with an option to purchase 10 more. **CITY** anticipates ordering up to 13 buses the first year and up to 13 buses the second year. The balance is to be ordered over the following 3 years. The quantities listed are estimated usage only and do not guarantee or limit, in any way the amount of vehicles the City of Wichita may purchase under this contract. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

4. **Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

MINIMUM SCOPE AND EXTENT OF COVERAGE REQUIRED

Obtain and maintain Commercial General Liability Insurance with completed operations/products endorsement with limits as follows:

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

The Commercial General Liability Insurance policy shall remain in force throughout the duration of the performance of the scope of services for any task order(s) under this agreement as evidenced by a Certificate of Insurance which names The City of Wichita as an Additional Insured. The insurance shall have an A.M. Best Rating of A-VI or better. Certificates are to note the Best Rating and be submitted to The City of Wichita within ten (10) days after full execution of this contract. The contractor agrees to provide The City of Wichita thirty (30) days advance notice of cancellation of all insurance policies.

5. Independent Contractor. The relationship of the **VENDOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **VENDOR** shall be considered an employee of the **CITY**.

6. Compliance with Laws. **VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

7. No Assignment. The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

8. Non-Discrimination. **VENDOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

9. Third Party Rights. It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

10. No Arbitration. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

11. Governing Law. This contract shall be interpreted according to the laws of the State of Kansas. The parties agree that this contract has been created in Kansas.

12. Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

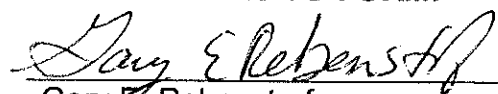
THE CITY OF WICHITA

Janis Edwards
Deputy City Clerk

Carl Brewer
Mayor

APPROVED AS TO FORM:

GILLIG LLC



Gary E. Rebenstorf
Director of Law *By SD*

Signature

Print Signature Name

Title (Managing Member)

Exhibit A

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

FEDERAL TRANSIT ADMINISTRATION

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20. Disadvantaged Business Enterprises (DBE)
21. Incorporation of Federal Transit Administration (FTA) Terms

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

3. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

5. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

6. BUS TESTING

49 U.S.C. 5323(c)

49 CFR Part 665

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

7. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

8. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal

contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

9. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement

(defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II Non State Grantees						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

10. FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

11. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** -- The City of Wichita shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

13. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

15. TERMINATION

**49 U.S.C. Part 18
FTA Circular 4220.1E**

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in

accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by The City of Wichita. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to The City of Wichita, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. PRIVACY ACT **5 U.S.C. 552**

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to

the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

18. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities

undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

19. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or

property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

20. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is .68 %.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as The City of Wichita deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the The City of Wichita. In addition, **is required to return any**

retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify The City of Wichita, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of The City of Wichita.

21. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: Purchase of Buses (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the purchase of ten 35-foot, diesel engine low-floor buses from the Gillig LLC.

Background: Wichita Transit operates a fleet of 56 buses and trolleys. In 2014, twenty-five 35-foot buses are eligible for replacement. These vehicles have been included in Wichita Transit's fleet replacement schedule and the City's adopted capital improvement program.

Analysis: The useful life expectancy for 35-foot or 40-foot transit vehicles has been established by the Federal Transit Administration (FTA) as 12 years. Replacement of buses that are beyond their useful life will result in better control over maintenance costs and improvement in service dependability.

Wichita Transit has received approval from the City Council to execute a grant from the FTA to purchase up to ten buses. In addition, Wichita Transit has an approved bus procurement contract with Gillig LLC to purchase of up to 50 buses over a five-year period. The current delivery time for this bus order is 12 months. Wichita Transit would not receive delivery of these new buses until July of 2015.

Financial Consideration: The cost per vehicle for this procurement is \$427,246. The total cost to acquire ten buses with the necessary enhancements is \$4,272,460. The funding breakdown for this procurement is \$3,546,140 Federal portion (83%) and \$726,318 (17%) local match. The local match will be funded with general obligation bonds. This acquisition is included in the City's 2011-2020 Adopted Capital Improvement Program for 2014.

Legal Consideration: The City's Law Department has reviewed and approved the procurement as to form.

Recommendation/Actions: It is recommended that the City Council approve the selection of the Gillig LLC for the purchase of ten buses and to authorize the Purchasing Manager to execute a purchase order.

Attachments: None.

Second Reading Ordinances for July 8, 2014 (first read on July 1, 2014)

A. Public Hearing and Approval of a Façade Improvement Project – 143 N. Rock Island (District VI)

ORDINANCE NO. 49-773

AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS –143 NORTH ROCK ISLAND IMPROVEMENT DISTRICT).

B. ZON2014-00005 – Zone change from SF-5 Single-family Residential to TF-3 Two-Family Residential on Property Located West of South 12th Street East, Approximately One-Quarter Mile North of East Pawnee Street (District II)

ORDINANCE NO. 49-774

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

C. ZON2014-00006 – City Zone Change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on Property Generally Located North of Central Avenue, East of Interstate Highway 235, on the West Side of Elder Street (District VI)

ORDINANCE NO. 49-775

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: ZON2014-00007 – Zone Change Request from SF-5 Single-family Residential (SF-5) to LC Limited Commercial (LC), generally located west of Seneca Street on the north side of 43rd Street South (1116 W. 43rd Street S.) (District IV).

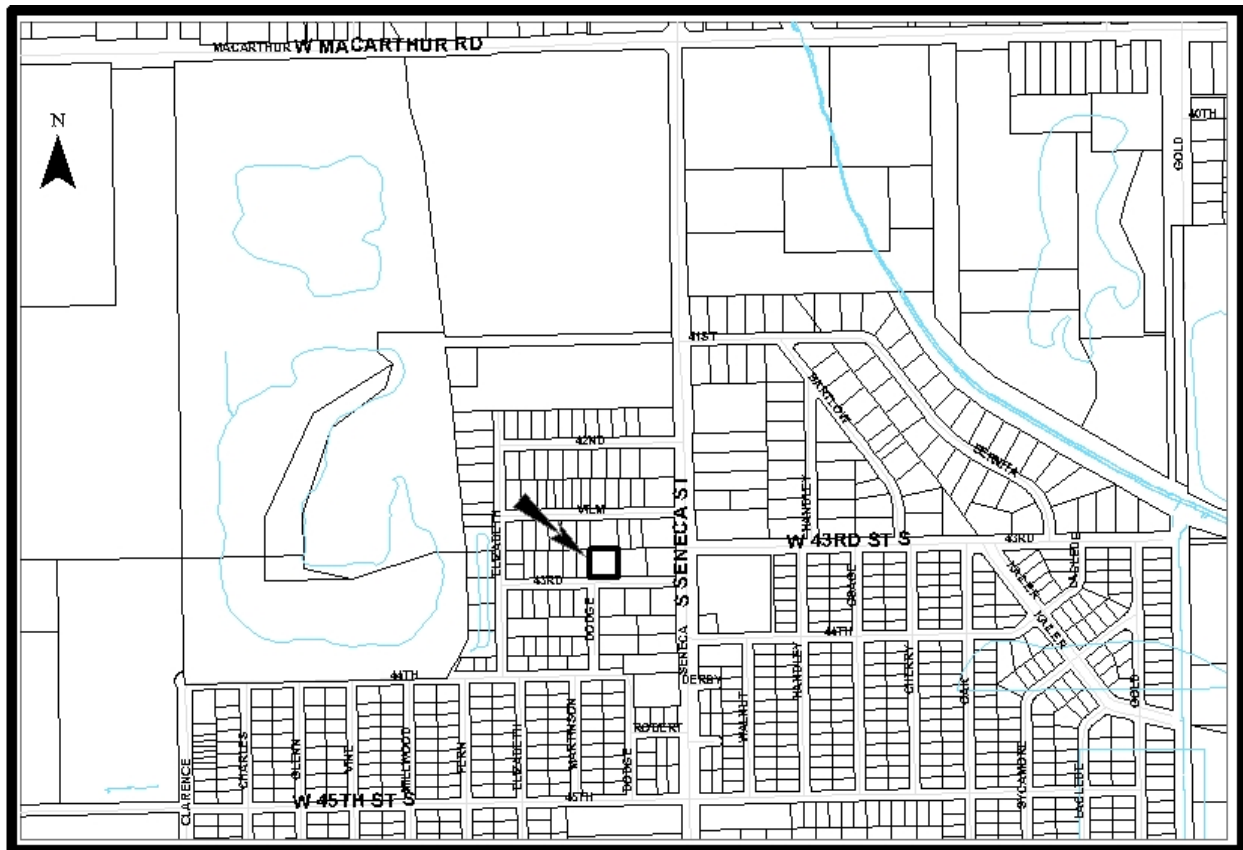
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The MAPC recommended approval of the request (9-0).

DAB Recommendation: District Advisory Board IV recommended approval of the request (9-0).

MAPD Staff Recommendation: Metropolitan Area Planning Department staff recommended approval of the request.



Background: The .5-acre application area is currently zoned SF-5 Single-Family Residential (SF-5), it has remained vacant since platting in 1953. The applicant also owns the LC Limited Commercial (LC) zoned lot east of the site, developed with a vehicle repair business in a metal building and a single-family residence. The applicant wishes to expand the existing vehicle repair business onto the application area and therefore requests a zone change to LC. Under LC zoning, the Unified Zoning Code (UZO) would permit the following land uses on this site by right (which are not permitted under the current SF-5 zoning): duplex, multi-family, assisted living, group residence, correctional placement residence, hospital, nursing facility, university or college, animal care, automated teller machine, bank or financial institution, broadcast/recording studio, construction sales and services, convenience store, farmers market, funeral home, hotel or motel, medical service, nurseries or garden centers, general office, commercial parking area, pawnshop, personal care service, personal improvement service, post office substation, limited printing and copying, indoor entertainment and recreation, restaurant, general retail, secondhand store, service station, limited vehicle repair, vocational school, agricultural research, agricultural sales and service. Under LC zoning, the UZO would require compatibility setbacks from SF-5 zoning, parking, screening and landscaping; these requirements will limit development on the site. The UZO requires a 25-foot compatibility setback from SF-5 zoning to the north, it limits building height to 35 feet within 50 feet of SF-5 zoning, it limits light pole height to 15 feet within 200 feet of residential zoning, and it requires three parking spaces per 1,000 square feet for most commercial uses. The site was platted with a 30-foot front setback and an 8-foot easement along the west property line.

The two lots east of the application area, between the site and South Seneca, are zoned LC. Approval of this zone change request would result in contiguous LC zoning for three lots, or 450 linear feet, on the north side of West 43rd Street South. Property north of the site is zoned SF-5 and developed with a single-family house. South of the site, across 43rd Street South, is an SF-5 zoned legal non-conforming multi-family residence. East of the site is the applicant's LC zoned property, and west of the site is an MF-18 Multi-family Residential (MF-18) zoned neighborhood of single and multi-family residences.

Analysis: District Advisory Board (DAB) IV heard the rezone request on June 2, 2014, and recommended approval (9-0). No citizens spoke at the DAB hearing on this request.

At the Metropolitan Area Planning Commission (MAPC) meeting held on June 5, 2014, the MAPC voted (9-0) to recommend approval of the request. No citizens spoke at the MAPC hearing and no protests were filed on this request.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the zone change, place the ordinance on first reading and authorize the Mayor to sign the ordinance (simple majority vote required).

Attachments:

- Ordinance
- DAB memorandum
- MAPC minutes

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2014-00007

Zone change from SF-5 Single-family Residential (SF-5) to LC Limited Commercial (LC) on approximately .5 acres described as:

Lot 10, Block B, Vilm Gardens 2nd Addition to Wichita, KS; generally located west of Seneca Street on the north side of 43rd Street South (1116 W. 43rd Street S.)

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Carl Brewer - Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Gary E. Rebenstorf, City Attorney



**INTEROFFICE
MEMORANDUM**

TO: MAPC
FROM: Case Bell, Community Liaison
SUBJECT: ZON2014-00007: Request for Zoning Change to LC Limited Commercial (LC) Zoning
DATE: 6-2-2014

Jess McNeely of the Planning Department reported on the proposed zoning change generally located west of South Seneca on the north side of West 43rd Street South (1116 W. 43rd Street S.). The .5-acre application area is currently zoned SF-5 Single-Family Residential (SF-5), it has remained vacant since platting in 1953. The applicant also owns the LC Limited Commercial (LC) zoned lot east of the site, developed with a vehicle repair business in a metal building and a single-family residence. The applicant wishes to expand the existing vehicle repair business onto the application area and therefore requests a zone change to LC. The two lots east of the application area, between the site and South Seneca, are zoned LC. Approval of this zone change request would result in contiguous LC zoning for three lots, or 450 linear feet, on the north side of West 43rd Street South. **McNeely** also reported that property to the east, which is also owned by the same property owner is zoned LC all the way to the corner.

The DAB had no questions or comments.

The DAB IV members voted 9-0 to recommend approval of the request.

**EXCERPT MINUTES OF THE JUNE 5, 2014 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: ZON2014-00007 – Caleb and Charles Shrout (owners) request for a City zone change from SF-5 Single-family Residential to LC Limited Commercial on property described as:

Lot 10, Block B, Vilm Gardens 2nd Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The .5-acre application area is currently zoned SF-5 Single-Family Residential (SF-5), it has remained vacant since platting in 1953. The applicant also owns the LC Limited Commercial (LC) zoned lot east of the site, developed with a vehicle repair business in a metal building and a single-family residence. The applicant wishes to expand the existing vehicle repair business onto the application area and therefore requests a zone change to LC. Under LC zoning, the Unified Zoning Code (UZC) would permit the following land uses on this site by right (which are not permitted under the current SF-5 zoning): duplex, multi-family, assisted living, group residence, correctional placement residence, hospital, nursing facility, university or college, animal care, automated teller machine, bank or financial institution, broadcast/recording studio, construction sales and services, convenience store, farmers market, funeral home, hotel or motel, medical service, nurseries or garden centers, general office, commercial parking area, pawnshop, personal care service, personal improvement service, post office substation, limited printing and copying, indoor entertainment and recreation, restaurant, general retail, secondhand store, service station, limited vehicle repair, vocational school, agricultural research, agricultural sales and service. Under LC zoning, the UZC would require compatibility setbacks from SF-5 zoning, parking, screening and landscaping; these requirements will limit development on the site. The UZC requires a 25-foot compatibility setback from SF-5 zoning to the north, it limits building height to 35 feet within 50 feet of SF-5 zoning, it limits light pole height to 15 feet within 200 feet of residential zoning, and it requires three parking spaces per 1,000 square feet for most commercial uses. The site was platted with a 30-foot front setback and an 8-foot easement along the west property line.

The two lots east of the application area, between the site and South Seneca, are zoned LC. Approval of this zone change request would result in contiguous LC zoning for three lots, or 450 linear feet, on the north side of West 43rd Street South. Property north of the site is zoned SF-5 and developed with a single-family house. South of the site, across 43rd Street South, is an SF-5 zoned legal non-conforming multi-family residence. East of the site is the applicant's LC zoned property, and west of the site is an MF-18 Multi-family Residential (MF-18) zoned neighborhood of single and multi-family residences.

CASE HISTORY: The site was platted as Lot 10, Block B of the Vilm Gardens 2nd Addition in 1953.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residence
SOUTH:	SF-5	Multi-family residences
EAST:	LC	Vehicle repair, single-family residence, warehouse/office
WEST:	MF-18	Single and multi-family residences

PUBLIC SERVICES: West 43rd Street South is a paved local street with a 60-foot right of way. South Seneca is an arterial located two lots to the east. All other public utilities are available.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan identifies the site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including multi-family units, typically found in large urban municipality. The *Land Use Guide* identifies property east of the site along Seneca as “local commercial.” The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials, should locate in compact clusters or nodes versus extended strip developments, should not put commercially generated traffic on residential streets, and should have site design features which limit noise, lighting and other activity from adversely impacting surrounding residential areas. The application area is within the 2002 South Wichita/Haysville Area Plan. That plan recommends that the site remain low density residential. The plan also encourages the expansion of existing businesses.

RECOMMENDATION: Staff notes that this lot has remained vacant since platting in 1953, the requested zone change would extend contiguous LC zoning from the Seneca frontage to expand an existing business. Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The two lots east of the application area, between the site and South Seneca, are zoned LC. Approval of this zone change request would result in contiguous LC zoning for three lots, or 450 linear feet, on the north side of West 43rd Street South. Property north of the site is zoned SF-5 and developed with a single-family house. South of the site, across 43rd Street South, is an SF-5 zoned legal non-conforming multifamily residence. East of the site is the applicant's LC zoned property, and west of the site is an MF-18 zoned neighborhood of single and multi-family residences.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned SF-5 and could be developed with single-family residences. However, the site has remained vacant since platting, and existing commercial development bordering the site to the east may reduce the site's desirability for future single-family residential development.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Residential neighbors to the north, south and west could be impacted with increased noise, light, trash, traffic and activity from development under LC zoning. These impacts would not be new to the area as significant commercial zoning and development already exists in the immediate area. The compatibility standards of the UZC should mitigate these impacts on nearby residences.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan identifies the site as “urban residential.” The urban residential

category encompasses areas that reflect the full diversity of residential development densities and types, including multi-family units, typically found in large urban municipality. The *Land Use Guide* identifies property east of the site along Seneca as “local commercial.” The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials, should locate in compact clusters or nodes versus extended strip developments, should not put commercially generated traffic on residential streets, and should have site design features which limit noise, lighting and other activity from adversely impacting surrounding residential areas. The application area is within the 2002 South Wichita/Haysville Area Plan. That plan recommends that the site remain low density residential. The plan also encourages the expansion of existing businesses.

- (5) **Impact of the proposed development on community facilities:** The proposed zone change would bring increased commercial traffic one lot further west on this portion of 43rd Street South. All other services are in place, any increased demand on community facilities can be handled by existing infrastructure.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, MCKAY seconded the motion, and it carried (9-0).

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

SUBJECT: PUD2014-00001 – Zone Change From SF-5 Single-Family Residential to the Planned Unit Development (PUD#42) District on Property Located on the East Side of South Meridian Avenue, 1,700 Feet South of West MacArthur Road (4200 South Meridian) (District IV)

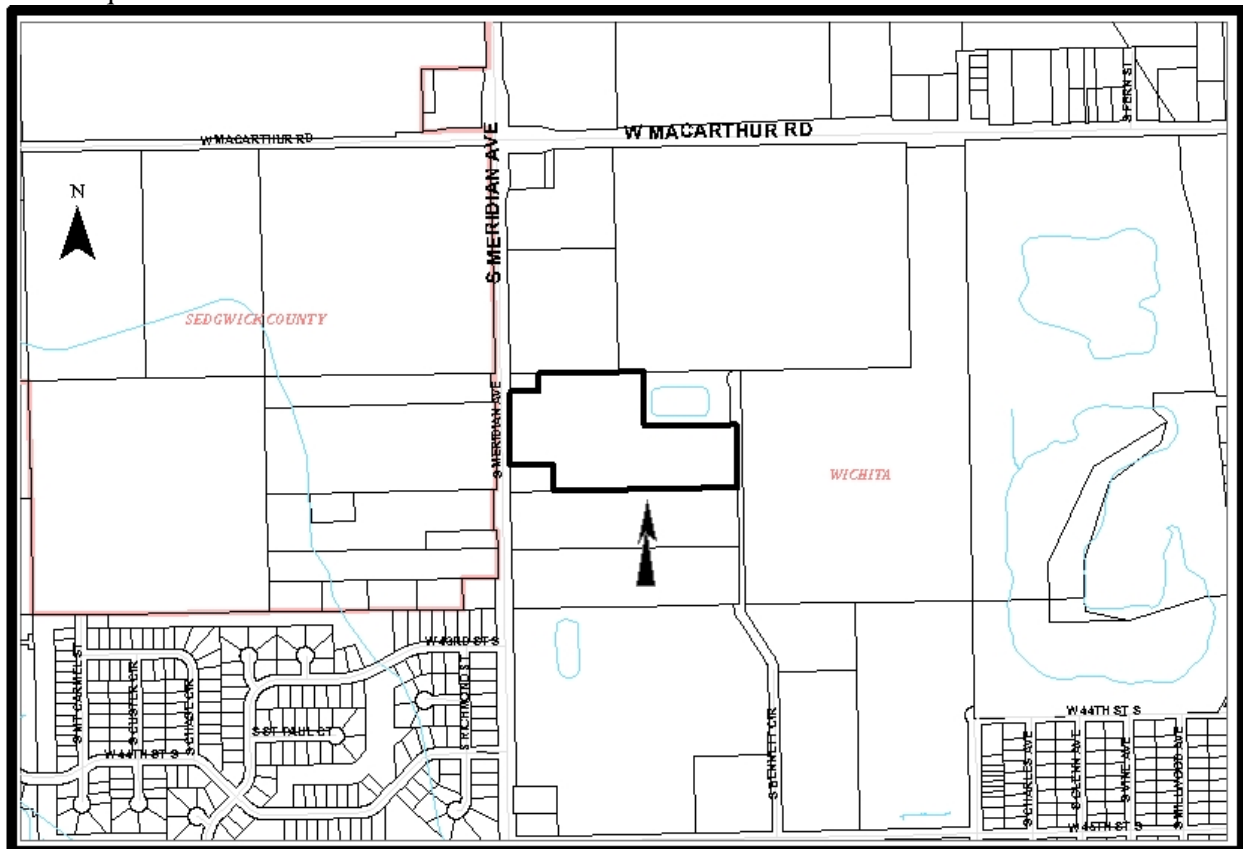
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The MAPC recommended approval of the request (9-0).

DAB Recommendation: District Advisory Board IV recommended approval of the request (9-0).

MAPD Staff Recommendation: Metropolitan Area Planning Department staff recommended approval of the request.



Background: The application area is located 1,700 feet south of West MacArthur Road on the east side of South Meridian Avenue; is zoned SF-5 Single-family Residential (SF-5) and contains 14.74 acres. The property has recently been developed with a 100 by 120-foot (12,000 square feet) metal agricultural building. The applicants request approval of Planned Unit Development (PUD #42) 2014-00001 to permit: all uses permitted by right in the SF-5 district, “recreation and entertainment, indoor,” “recreation and entertainment, outdoor,” “event center in the City” and “auditorium or stadium.” Verbally, the applicant’s agent has indicated the applicant would probably not have more than three outside baseball/softball fields and one soccer field.

In an attached statement dated April 24, 2014, the applicant indicates he proposes to convert the 12,000 square-foot agricultural building to an “inside recreation facility for the local school athletes to use.” The applicant further indicates that the proposed facility is not intended to compete with other athletic facilities, such as the nearby Southwest Boys Club facilities, whose main focus is league play. The proposed facility is intended to be a training facility. The proposed zoning (recreation and entertainment, indoor) would allow the conversion of the site’s existing agricultural building to a year-round training facility. If the request is approved the applicant indicates the existing building would be converted immediately. Outdoor recreation and entertainment uses would be installed over the next few years.

Proposed maximum building coverage is 30 percent or 192,622 square feet; maximum floor area ratio is 50 percent; maximum gross floor area is 321,037 square feet and maximum building height is 35 feet.

The applicant’s attached site plan depicts the location of the existing 100 by 120-foot building. The site plan also indicates the structure is located approximately 40 feet from the front property line located along South Meridian Avenue. The south side of the existing structure is located approximately 43 feet from the SF-5 zoned and single-family residential developed tract located to the south. (Code required side yard compatibility building setback from SF-5 zoned property is 25 feet for a property like the subject site that has approximately 418 feet of street frontage.) The PUD proposes the following building setbacks: front 20 feet; rear 15 feet and interior side yard of five feet. (In comparison, the SF-5 district requires the following building setbacks: front-25 feet; rear-20 feet, except that the rear setback may be reduced to five feet when abutting a platted reserve with a minimum width of 20 feet and an interior side-yard is six-feet.)

Currently the site has one point of access to South Meridian Avenue. The PUD proposes a second access point but does not indicate its location.

The applicant proposes one illuminated on-site ground or pole sign up to 200 square feet. Illuminated building signs that face Meridian, not exceeding 400 square feet or 20 percent of the building elevation are also proposed. Off-site or portable signage is to be prohibited.

An existing gravel parking area, approximately 100 feet by 60 feet is located on the north side of the existing agricultural building. The zoning code specifies the number of off-street parking spaces for each requested use: recreation and entertainment, indoor and outdoor–parking study; event center in the City is either one space per 45 square feet used for community assembly or if alcohol is involved, one space per two occupants and auditorium or stadium-.33 space per seat. Additionally, UZC Article IV, Section IV-A.2.b. stipulates that all parking areas other than single-family through four-family dwelling units shall be surfaces with concrete, asphaltic concrete, asphalt or other comparable surfacing material. The applicant has requested that gravel parking be allowed to remain until the property is platted, except that American with Disabilities Act required (ADA) parking would be paved. At present, staff does not have enough information to calculate the correct number of required parking spaces for some of the uses; however, one parking layout of the existing 100 by 60-foot parking area yields a maximum of 17-18 eight by 18-foot spaces with 24-foot driving aisles and one ADA space.

If the property is used as an event center, it could potentially be rated to hold one person per seven square feet of space resulting in a permitted occupant load approaching 1,714 persons. At this point it is unknown what sewer services are available. Public sanitary sewer is located in South Bennett Circle located along the east property line (over 1,100 feet away). Public sanitary sewer is also located along

part of the north property line, over 400 feet away, in the manufactured home park. Staff from the Environmental Services Division has advised the applicant he will need to have a third party conduct a soil profile study for the site if on-site services are being considered. It is doubtful an on-site sanitary sewer facility's capacity will be an economically feasible solution to accommodate that level of service demand for a single user to operate an event center. An occupancy load of 1,714 people will require additional man-door exits beyond the existing single man-door currently in place. Separate restroom facilities with multiple fixtures would also be required. If food and drink, other than vending machines, are also provided, the building will need to be sprinklered. If there is not any food or drink other than vending machines, the building would not likely be required to be sprinklered.

The applicant has also requested that the site not be required to plat until a building permit for a second separate structure is requested, not including batting cages, fencing and/or backstops.

The applicant proposes to leave the existing tree row located along the common property line with the single-family residential lot located to the south and arterial street screening between the indoor recreation structure/parking and Meridian is proposed to be per code.

North of the application area is an unplatted .34 acre tract that contains a single-family residence; a platted 58.16-acre manufactured home park (Mobile Home Manor) and a platted reserve that appears to contain a 3.44-acre sewage lagoon. East of the application area is the platted 48.63-acre Silver Spur/Twin Oaks manufactured home park. South of the site is an unplatted .83-acre tract containing a single-family home and an unplatted 19.39-acre tract used for farming or ranching. West of the subject site, across South Meridian Avenue, is a SF-20 Single-family Residential (SF-20) zoned horse stable and a farm or ranch with a residence.

Article IV, Section IV-B.4 of the UZC states that outdoor light sources, including base or pedestal, pole and fixture shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lot, unless evidence is provided to the satisfaction of the Zoning Administrator that the light source will be aimed or shielded such that the light source is not visible from the neighboring lot. Lighting sources shall be limited to 15 feet in height within 200 feet of residential zoning districts.

The UZC (Article IV, Section IV-B.3.d.) requires screening along rear and side yards when nonresidential uses abut or are across an alley from residential zoning. In this instance the property abuts MH and SF-5 zoning on the north and south side yards. Thirty feet of half-street right-of-way separates the application areas rear property line from the manufactured home park located farther east and eliminates the screening requirement.

The Wichita-Sedgwick County Unified Zoning Code (UZC) defines the requested uses as:

Recreation and Entertainment, Indoor means a privately-owned establishment offering recreation, entertainment or games of skill to the general public or members that is wholly enclosed in a building. Typical uses include: bowling alleys, indoor heaters, bingo parlors, pool halls, billiards parlors, video game arcades, racquetball and handball courts and amusement rides. It does not include buildings typically accessory to a subdivision that are for use by the subdivision's residents and their guests or rodeo in the City.

Recreation and Entertainment, Outdoor means a privately-owned establishment offering recreation, entertainment or games of skill to the general public or members wherein any portion of the activity takes place in the open. Typical uses include archery ranges, batting cages, golf facilities, tennis courts and amusement rides. It does not include golf courses, parks, open space and recreation facilities typically accessory to a subdivision that are for use by the subdivision's residents and their guest or rodeo in the City.

Event Center in the City means premises that are frequently rented out for public or private activities that are not repeated on a weekly basis, and that are not open to the public on a daily basis at time other than when an event is scheduled.

Auditorium or Stadium means an open, partially enclosed or fully enclosed facility used or intended to be used primarily for spectator sports, entertainment events, expositions and other public gatherings. Typical uses include convention and exhibition halls, sports arenas and amphitheaters.

Based upon the information available at the time the staff report was prepared, it is recommended the request be approved subject to the following conditions:

- (1) Permitted uses are: “recreation and entertainment, indoor,” “recreation and entertainment, outdoor,” “auditorium or stadium,” “event center” as defined by the Wichita-Sedgwick County Unified Zoning Code or as modified below, and all uses permitted by right in the SF-5 Single-family Residential zoning district. “Recreation and entertainment, outdoor” and “recreation and entertainment, indoor” uses are limited to sports activities extra-curriculum activities typically associated with public school sports programs, such as: football, baseball, softball, soccer, track or tennis. Prior to the commencement of any “recreation and entertainment, outdoor” use or activity, the applicant shall submit a more detailed site plan that provides specific details of the activities, including the location and size of sports fields or other improvements associated with outdoor activities; the location, number and surface of parking spaces or lots; location and height of lighting standards; location, height and material used for fencing; location, number and material used for seating or bleachers; restroom facilities; etc. The existing building may be used for sports activities similar to extra-curriculum activities typically associated with public school sports programs, such as: football, baseball, softball, soccer, track or tennis provided all applicable building, fire or sanitation code requirements have been met and all applicable inspections, licenses or permits have been obtained, including change of occupancy. Use of the property for an event center, auditorium or stadium is prohibited until the property has been platted, and has obtained all applicable inspections, licenses or permits, including but not limited to change in occupancy, building, fire, and sanitation. Nightclub in the City is not permitted.
- (2) All applicable permits, licenses, inspections or change in use shall be obtained prior to use of the property for any PUD required uses other than SF-5 and agricultural permitted uses.
- (3) Currently the site has one access point, additional access points shall be determined at the time of platting unless the City’s Traffic Engineer approves additional access points prior to platting.
- (4) Non-single-family residential building setbacks shall be as follows: Meridian Avenue frontage-20 feet; South Bennett Circle frontage-50 feet and interior side yard-25 feet. Athletic field uses shall be located and conducted at least 50 feet from TF-3 or more restrictive zoning as measured at the closest point of the athletic field to the TF-3 or more restrictive zoning. SF-5 Single-family Residential district uses permitted by right shall follow SF-5 district standards.
- (5) Maximum non-residential building coverage is 30 percent or 192,622 square feet and maximum floor area ratio is 50 percent; maximum gross floor area is 321,037 square feet.
- (6) Maximum building height is 35 feet.
- (7) Signage shall comply with LC district standards except as follows. One illuminated on-site ground or pole sign up to 200 square feet is permitted. Maximum on-site ground or pole sign shall be 15 feet. Illuminated building signs that face Meridian, not exceeding 400 square feet or 20 percent of the building elevation are also proposed. No wall signs are permitted on the north, east or south facades except for small directional and regulatory signs allowed under Section 24.04.190. Off-site or portable signage is prohibited.
- (8) Gravel parking (as defined by Article II, Section II-B.1.p, All-Weather Surface) is permitted for outdoor recreational uses until the property is platted, except that American with Disabilities Act (ADA) required parking spaces are to be paved prior to commencing activities requiring such spaces. The parking surface for uses located within the existing building may be gravel until the property is platted.

- (9) The number of off-street parking spaces shall be provided per the UZC. For those uses requiring a parking study, the study shall be done within three months of final approval.
- (10) No string type of lighting or banners shall be permitted. Lighting of outdoor recreation and entertainment fields is permitted. Lighting of other facilities shall be per UZC standards.
- (11) The site shall be operated in compliance with the City's noise control ordinance.
- (12) The property shall be properly policed to ensure proper maintenance and removal of trash from the premises to eliminate problems to adjacent or public property.
- (13) The site shall be developed, maintained and operated in general conformance with the approved site plan.
- (14) If the Zoning Administrator finds that there is a violation of any of the conditions of approval, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that particular use null and void.

Analysis: District Advisory Board IV reviewed the application on June 2, 2014, and voted 9-0 to approve the request subject to the recommended conditions of approval. An abutting property owner was present, and asked questions concerning drainage and lighting.

The Metropolitan Area Planning Commission reviewed the request on June 5, 2014, and approved (9-0) the request subject to the recommended conditions of approval. Other than the applicant, there were not any speakers present to speak to the application. There have not been any protests filed; therefore, the application may be approved by the City Council with a simple majority vote.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested Planned Unit Development, PUD#42, subject to the recommended conditions of approval (simple majority vote required); authorize the Mayor to sign the ordinance and place the ordinance on first reading.

Attachments: Site plan, MAPC minutes, DAB memo and ordinance.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. PUD2014-00001

Zone change request from SF-5 Single-family Residential to PUD Planned Unit Development 2014-00001 (PUD#42), on property containing approximately 14.74 acres generally located on the east side of South Meridian Avenue, 1,700 feet south of West MacArthur Road and described as:

The Southwest Quarter of the Northwest Quarter in Section 18, Township 28, Range 1 East of the 6th P.M., Sedgwick County, Kansas EXCEPT beginning 658.24' North of the Southwest corner; thence East 290.4'; thence South 150 feet; thence West 290.4'; thence South to the beginning and EXCEPT that part platted as Mobile Manor South Addition and EXCEPT the North 97 feet of the West 209 feet thereof and EXCEPT that part deeded for street, Sedgwick County, Kansas.

PUD2014 (PUD#42) is approved subject to the following conditions:

- (1) Permitted uses are: "recreation and entertainment, indoor," "recreation and entertainment, outdoor," "auditorium or stadium," "event center" as defined by the Wichita-Sedgwick County Unified Zoning Code or as modified below, and all uses permitted by right in the SF-5 Single-family Residential zoning district. "Recreation and entertainment, outdoor" and "recreation and entertainment, indoor" uses are limited to sports activities extra-curriculum activities typically associated with public school sports programs, such as: football, baseball, softball, soccer, track or tennis. Prior to the commencement of any "recreation and entertainment, outdoor" use or activity, the applicant shall submit a more detailed site plan that provides specific details of the activities, including the location and size of sports fields or other improvements associated with outdoor activities; the location, number and surface of parking spaces or lots; location and height of lighting standards; location, height and material used for fencing; location, number and material used for seating or bleachers; restroom facilities; etc. The existing building may be used for sports activities similar to extra-curriculum activities typically associated with public school sports programs, such as: football, baseball, softball, soccer, track or tennis provided all applicable building, fire or sanitation code requirements have been met and all applicable inspections, licenses or permits have been obtained, including change of occupancy. Use of the property for an event center, auditorium or stadium is prohibited until the property has been platted, and has obtained all applicable inspections, licenses or permits, including but not limited to change in occupancy, building, fire, and sanitation. Nightclub in the City is not permitted.
- (2) All applicable permits, licenses, inspections or change in use shall be obtained prior to use of the property for any PUD required uses other than SF-5 and agricultural permitted uses.

- (3) Currently the site has one access point, additional access points shall be determined at the time of platting unless the City's Traffic Engineer approves additional access points prior to platting.
- (4) Non-single-family residential building setbacks shall be as follows: Meridian Avenue frontage-20 feet; South Bennett Circle frontage-50 feet and interior side yard-25 feet. Athletic field uses shall be located and conducted at least 50 feet from TF-3 or more restrictive zoning as measured at the closest point of the athletic field to the TF-3 or more restrictive zoning. SF-5 Single-family Residential district uses permitted by right shall follow SF-5 district standards.
- (5) Maximum non-residential building coverage is 30 percent or 192,622 square feet and maximum floor area ratio is 50 percent; maximum gross floor area is 321,037 square feet.
- (6) Maximum building height is 35 feet.
- (7) Signage shall comply with LC district standards except as follows. One illuminated on-site ground or pole sign up to 200 square feet is permitted. Maximum on-site ground or pole sign shall be 15 feet. Illuminated building signs that face Meridian, not exceeding 400 square feet or 20 percent of the building elevation are also proposed. No wall signs are permitted on the north, east or south facades except for small directional and regulatory signs allowed under Section 24.04.190. Off-site or portable signage is prohibited.
- (8) Gravel parking (as defined by Article II, Section II-B.1.p, All-Weather Surface) is permitted for outdoor recreational uses until the property is platted, except that American with Disabilities Act (ADA) required parking spaces are to be paved prior to commencing activities requiring such spaces. The parking surface for uses located within the existing building may be gravel until the property is platted.
- (9) The number of off-street parking spaces shall be provided per the UZC. For those uses requiring a parking study, the study shall be done within three months of final approval.
- (10) No string type of lighting or banners shall be permitted. Lighting of outdoor recreation and entertainment fields is permitted. Lighting of other facilities shall be per UZC standards.
- (11) The site shall be operated in compliance with the City's noise control ordinance.
- (12) The property shall be properly policed to ensure proper maintenance and removal of trash from the premises to eliminate problems to adjacent or public property.
- (13) The site shall be developed, maintained and operated in general conformance with the approved site plan.
- (14) If the Zoning Administrator finds that there is a violation of any of the conditions of approval, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that particular use null and void.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 15th day of July, 2014.

Carl Brewer - Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Gary E. Rebenstorf, City Attorney

WENZEI SPORTS PLANNED UNIT DEVELOPMENT, PUD-42
WICHITA, SEDGWICK CO., KANSAS
PUD 2014-01

64.88

PARCEL ONE

FUTURE BALLFIELDS

RESERVE

316

486

FUTURE BALLFIELDS

0 25 50 100
1" = 100'



30

FUTURE BALLFIELDS AND/OR
BATTING CAGES

1043

240.4

20' SETBACK

136

PARKING

PAVED
HANDICAPP
PARKING

100'

INDOOR
FACILITY

120'

MERIDIAN AVENUE

TOTAL GROSS AREA = 14.74 ACRES±
TOAL NET AREA = 14.74 ACRES±

THIS DEVELOPMENT IS PROOSED TO CONTAIN 14.74 NET ACRES ±

GENERAL PROVISIONS

1. ACCESS CONTROL: LIMITED TO TWO OPENINGS TO MERIDIAN
2. BUILDING SETBACKS: FRONT: TWENTY FEET; REAR: FIFTEEN FEET; INTERIOR SIDE: FIVE FEET
3. SIGNAGE: ONE ILLUMINATED ON-SITE GROUND OR POLE SIGNS AS PERMITTED BY SECTION 24.04.221, EXCEPT THAT ON-SITE GROUND OR POLE SIGN SHALL NOT EXCEED 200 SQUARE FEET. ILLUMINATED BUILDING SIGNS; PROVIDED THAT THE SIGNAGE MUST FACE MERIDIAN AND NOT EXCEED 400 SQUARE FEET OR 20% OF THE BUILDING ELEVATION.
4. NO OFFSITE OR PORTABLE SIGNS ALLOWED
5. PLATTING WILL NOT BE REQUIRED UNTIL THE ISSUANCE OF A BUILDING PERMIT FOR A SECOND SEPARATE STRUCTURE NOT INCLUDING: BATTING CAGES, FENCING, AND/OR BACKSTOPS
6. GRAVEL PARKING ALLOWED UNTIL PLATTED EXCEPT THAT HANDICAPP PARKING AND ACCESS PER CITY CODE
7. EXISTING LANDSCAPING BETWEEN INDOOR RECREATION STRUCTURE AND SF5 PROPERTY TO THE SOUTH TO REMAIN. ARTERIAL STREET SCREENING BETWEEN INDOOR RECREATION STRUCTURE/PARKING AND ARTERIAL PER CITY CODE

LEGAL DESCRIPTION

SW1/4 OF THE NW1/4 EXCEPT THE SOUTH 20AC & EXCEPT BEGINNING 658.24 FT NORTH OF THE SW CORNER; EAST 290.4 FT; WEST 150 FT; WEST 290.4 FT; SOUTH TO BEGINNING & EXCEPT MOBILEMANOR SOUTH ADDITION & EXCEPT THE NORTH 97 FT AND WEST 209 FT THEREOF & EXCEPT PT FOR STREET; SEC 18-28-1E IN WICHITA, SEDGWICK COUNTY, KS

PARCEL DESCRIPTIONS

PARCEL ONE

PROPOSED USES: RECREATION AND ENTERTAINMENT INDOOR; RECREATION AND ENTERTAINMENT OUTDOOR; AUDITORIUM OR STADIUM, EVENT CENTER; ALL PERMITTED USES BY RIGHT IN THE SF-5 ZONING DISTRICT

NET AREA - 14.74 ACRES± OR 642,074 ± SQUARE FEET

MAXIMUM BUILDING COVERAGE - 30% OR 192,622 ± SQUARE FEET

FLOOR AREA RATIO - 50%

MAXIMUM GROSS FLOOR AREA- 321,037± SQUARE FEET

MAXIMUM BUILDING HEIGHT - THIRTY FIVE FEET

04-22-2014
RV 04-25-2014

FERRIS CONSULTING

**EXCERPT MINUTES OF THE JUNE 5, 2014 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: PUD2014-00001 - Fruition, LLC and Jason Wenzel Framing, Inc. (Jason Wenzel) / Greg Ferris Consulting (Greg Ferris) request creation of a new City PUD Planned Unit Development for "Outdoor and Indoor Recreation" on property described as:

The Southwest Quarter of the Northwest Quarter in Section 18, Township 28, Range 1 East of the 6th P.M., Sedgwick County, Kansas EXCEPT beginning 658.24' North of the Southwest corner; thence East 290.4'; th. South 150 feet; thence West 290.4'; thence South to the beginning and EXCEPT that part platted as Mobile Manor South Addition and EXCEPT the North 97 feet of the West 209 feet thereof and EXCEPT that part deeded for street.

BACKGROUND: The application area is located 1,700 feet south of West MacArthur Road on the east side of South Meridian Avenue; is zoned SF-5 Single-family Residential (SF-5) and contains 14.74 acres. The property has recently been developed with a 100 by 120-foot (12,000 square feet) metal agricultural building. The applicants request approval of Planned Unit Development (PUD #42) 2014-00001 to permit: all uses permitted by right in the SF-5 district, "recreation and entertainment, indoor," "recreation and entertainment, outdoor," "event center in the City" and "auditorium or stadium." Verbally, the applicant's agent has indicated the applicant would probably not have more than three outside baseball/softball fields and one soccer field.

In an attached statement dated April 24, 2014, the applicant indicates he proposes to convert the 12,000 square-foot agricultural building to an "inside recreation facility for the local school athletes to use." The applicant further indicates that the proposed facility is not intended to compete with other athletic facilities, such as the nearby Southwest Boys Club facilities, whose main focus is league play. The proposed facility is intended to be a training facility. The proposed zoning (recreation and entertainment, indoor) would allow the conversion of the site's existing agricultural building to a year-round training facility. If the request is approved the applicant indicates the existing building would be converted immediately. Outdoor recreation and entertainment uses would be installed over the next few years.

Proposed maximum building coverage is 30 percent or 192,622 square feet; maximum floor area ratio is 50 percent; maximum gross floor area is 321,037 square feet and maximum building height is 35 feet.

The applicant's attached site plan depicts the location of the existing 100 by 120-foot building. The site plan also indicates the structure is located approximately 40 feet from the front property line located along South Meridian Avenue. The south side of the existing structure is located approximately 43 feet from the SF-5 zoned and single-family residential developed tract located to the south. (Code required side yard compatibility building setback from SF-5 zoned property is 25 feet for a property like the subject site that has approximately 418 feet of street frontage.) The PUD proposes the following building setbacks: front 20 feet; rear 15 feet and interior side yard of five feet. (In comparison, the SF-5 district requires the following building setbacks: front-25 feet; rear-20 feet, except that the rear setback may be reduced to five feet when abutting a platted reserve with a minimum width of 20 feet and an interior side-yard is six- feet.)

Currently the site has one point of access to South Meridian Avenue. The PUD proposes a second access point but does not indicate its location.

The applicant proposes one illuminated on-site ground or pole sign up to 200 square feet. Illuminated building signs that face Meridian, not exceeding 400 square feet or 20 percent of the building elevation are also proposed. Off-site or portable signage is to be prohibited.

An existing gravel parking area, approximately 100 feet by 60 feet is located on the north side of the existing agricultural building. The zoning code specifies the number of off-street parking spaces for each requested use: recreation and entertainment, indoor and outdoor—parking study; event center in the City—is either one space per 45 square feet used for community assembly or if alcohol is involved, one space per two occupants and auditorium or stadium-.33 space per seat. Additionally, UZC Article IV, Section IV-A.2.b. stipulates that all parking areas other than single-family through four-family dwelling units shall be surfaces with concrete, asphaltic concrete, asphalt or other comparable surfacing material. The applicant has requested that gravel parking be allowed to remain until the property is platted, except that American with Disabilities Act required (ADA) parking would be paved. At present staff does not have enough information to calculate the correct number of required parking spaces for some of the uses; however, one parking layout of the existing 100 by 60-foot parking area yields a maximum of 17-18 8 by 18-foot spaces with 24-foot driving aisles and one ADA space.

If the property is used as an event center, it could potentially be rated to hold one person per seven square feet of space resulting in a permitted occupant load approaching 1,714 persons. At this point it is unknown what sewer services are available. Public sanitary sewer is located in South Bennett Circle located along the east property line (over 1,100 feet away). Public sanitary sewer is also located along part of the north property line, over 400 feet away, in the manufactured home park. Staff from the Environmental Services Division has advised the applicant he will need to have a third party conduct a soil profile study for the site if on-site services are being considered. It is doubtful an on-site sanitary sewer facility's capacity will be an economically feasible solution to accommodate that level of service demand for a single user to operate an event center. An occupancy load of 1,714 people will require additional man-door exits beyond the existing single man-door currently in place. Separate restroom facilities with multiple fixtures would also be required. If food and drink, other than vending machines, are also provided, the building will need to be sprinklered. If there is not any food or drink other than vending machines, the building would not likely be required to be sprinklered.

The applicant has also requested that the site not be required to plat until a building permit for a second separate structure is requested, not including batting cages, fencing and/or backstops.

The applicant proposes to leave the existing tree row located along the common property line with the single-family residential lot located to the south and arterial street screening between the indoor recreation structure/parking and Meridian is proposed to be per code.

North of the application area is an unplatted .34 acre tract that contains a single-family residence; a platted 58.16-acre manufactured home park (Mobile Home Manor) and a platted reserve that appears to contain a 3.44-acre sewage lagoon. East of the application area is the platted 48.63-acre Silver Spur/Twin Oaks manufactured home park. South of the site is an unplatted .83-acre tract containing a single-family home and an unplatted 19.39-acre tract used for farming or

ranching. West of the subject site, across South Meridian Avenue, is a SF-20 Single-family Residential (SF-20) zoned horse stable and a farm or ranch with a residence.

Article IV, Section IV-B.4 of the UZC states that outdoor light sources, including base or pedestal, pole and fixture shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lot, unless evidence is provided to the satisfaction of the Zoning Administrator that the light source will be aimed or shielded such that the light source is not visible from the neighboring lot. Lighting sources shall be limited to 15 feet in height within 200 feet of residential zoning districts.

The UZC (Article IV, Section IV-B.3.d.) requires screening along rear and side yards when nonresidential uses abut or are across an alley from residential zoning. In this instance the property abuts MH and SF-5 zoning on the north and south side yards. Thirty feet of half-street right-of-way separates the application areas rear property line from the manufactured home park located farther east and eliminates the screening requirement.

The Wichita-Sedgwick County Unified Zoning Code (UZC) defines the requested uses as:

Recreation and Entertainment, Indoor means a privately-owned establishment offering recreation, entertainment or games of skill to the general public or members that is wholly enclosed in a building. Typical uses include: bowling alleys, indoor heaters, bingo parlors, pool halls, billiards parlors, video game arcades, racquetball and handball courts and amusement rides. It does not include buildings typically accessory to a subdivision that are for use by the subdivision's residents and their guests or rodeo in the City.

Recreation and Entertainment, Outdoor means a privately-owned establishment offering recreation, entertainment or games of skill to the general public or members wherein any portion of the activity takes place in the open. Typical uses include archery ranges, batting cages, golf facilities, tennis courts and amusement rides. It does not include golf courses, parks, open space and recreation facilities typically accessory to a subdivision that are for use by the subdivision's residents and their guest or rodeo in the City.

Event Center in the City means premises that are frequently rented out for public or private activities that are not repeated on a weekly basis, and that are not open to the public on a daily basis at time other than when an event is scheduled.

Auditorium or Stadium means an open, partially enclosed or fully enclosed facility used or intended to be used primarily for spectator sports, entertainment events, expositions and other public gatherings. Typical uses include convention and exhibition halls, sports arenas and amphitheaters.

CASE HISTORY: The property was annexed in 1962 and was zoned SF-5.

ADJACENT ZONING AND LAND USE:

North: SF-5 and MH; single-family residential and manufactured home

South: SF-5; single-family residence, farm or ranch

East: MH; manufactured home park
West: SF-20; horse stable; residence and farm or ranch

PUBLIC SERVICES: North Meridian Avenue has 50 feet of half-street right of way along the frontage of the application area. There is 30 feet of contingent half-street right-of-way, South Bennett Circle, abutting the property's east property line. At the time of platting it is likely that 30 feet of right-of-way will be requested to complete South Bennett Circle. Public water is located on the west side of North Meridian Avenue and along the north property line (over 400 feet away). Public sanitary sewer is located in South Bennett Circle located along the east property line (over 1,100 feet away). Public sanitary sewer is also located along part of the north property line, over 400 feet away, in the manufactured home park. Staff from the Environmental Services Division has advised the applicant he will need to have a third party conduct soil profile study for the site if on-site services are being considered.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts the site as appropriate for "urban residential" uses. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. Elementary and middle school facilities, churches, playgrounds, parks and similar residential-serving uses may also be found in this category.

RECOMMENDATION: Based upon the information available at the time the staff report was prepared, it is recommended the request be approved subject to the following conditions:

- (1) Permitted uses are: "recreation and entertainment, indoor," "recreation and entertainment, outdoor," "auditorium or stadium," "event center" as defined by the Wichita-Sedgwick County Unified Zoning Code or as modified below, and all uses permitted by right in the SF-5 Single-family Residential zoning district. "Recreation and entertainment, outdoor" and "recreation and entertainment, indoor" uses are limited to sports activities extra-curriculum activities typically associated with public school sports programs, such as: football, baseball, softball, soccer, track or tennis. Prior to the commencement of any "recreation and entertainment, outdoor" use or activity, the applicant shall submit a more detailed site plan that provides specific details of the activities, including the location and size of sports fields or other improvements associated with outdoor activities; the location, number and surface of parking spaces or lots; location and height of lighting standards; location, height and material used for fencing; location, number and material used for seating or bleachers; restroom facilities; etc. The existing building may be used for sports activities similar to extra-curriculum activities typically associated with public school sports programs, such as: football, baseball, softball, soccer, track or tennis provided all applicable building, fire or sanitation code requirements have been met and all applicable inspections, licenses or permits have been obtained, including change of occupancy. Use of the property for an event center, auditorium or stadium is prohibited until the property has been platted, and has obtained all applicable inspections, licenses or permits, including but not limited to change in occupancy, building, fire, and sanitation. Nightclub in the City is not permitted.
- (2) All applicable permits, licenses, inspections or change in use shall be obtained prior to use of the property for any PUD required uses other than SF-5 and agricultural permitted uses.

- (3) Currently the site has one access point, additional access points shall be determined at the time of platting unless the City's Traffic Engineer approves additional access points prior to platting.
- (4) Non-single-family residential building setbacks shall be as follows: Meridian Avenue frontage-20 feet; South Bennett Circle frontage-50 feet and interior side yard-25 feet. Athletic field uses shall be located and conducted at least 50 feet from TF-3 or more restrictive zoning as measured at the closest point of the athletic field to the TF-3 or more restrictive zoning. SF-5 Single-family Residential district uses permitted by right shall follow SF-5 district standards.
- (5) Maximum non-residential building coverage is 30 percent or 192,622 square feet and maximum floor area ratio is 50 percent; maximum gross floor area is 321,037 square feet.
- (6) Maximum building height is 35 feet.
- (7) Signage shall comply with LC district standards except as follows. One illuminated on-site ground or pole sign up to 200 square feet is permitted. Maximum on-site ground or pole sign shall be 15 feet. Illuminated building signs that face Meridian, not exceeding 400 square feet or 20 percent of the building elevation are also proposed. No wall signs are permitted on the north, east or south facades except for small directional and regulatory signs allowed under Section 24.04.190. Off-site or portable signage is prohibited.
- (8) Gravel parking (as defined by Article II, Section II-B.1.p, All-Weather Surface) is permitted for outdoor recreational uses until the property is platted, except that American with Disabilities Act (ADA) required parking spaces are to be paved prior to commencing activities requiring such spaces. The parking surface for uses located within the existing building may be gravel until the property is platted.
- (9) The number of off-street parking spaces shall be provided per the UZC. For those uses requiring a parking study, the study shall be done within three months of final approval.
- (10) No string type of lighting or banners shall be permitted. Lighting of outdoor recreation and entertainment fields is permitted. Lighting of other facilities shall be per UZC standards.
- (11) The site shall be operated in compliance with the City's noise control ordinance.
- (12) The property shall be properly policed to ensure proper maintenance and removal of trash from the premises to eliminate problems to adjacent or public property.
- (13) The site shall be developed, maintained and operated in general conformance with the approved site plan.
- (14) If the Zoning Administrator finds that there is a violation of any of the conditions of approval, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that particular use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the application area is an unplatted .34 acre tract that contains a single-family residence; a platted 58.16-acre manufactured home park (Mobile Home Manor) and a platted reserve that appears to contain a 3.44-acre sewage lagoon. East of the application area is the platted 48.63-acre Silver Spur/Twin Oaks manufactured home park. South of the site is an unplatted .83-acre tract containing a single-family home and an unplatted 19.39-acre tract used for

farming or ranching. West of the subject site, across South Meridian Avenue, is a SF-20 Single-family Residential (SF-20) zoned horse stable and a farm or ranch with a residence.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 and developed with a 100 by 120-foot metal building. As currently zoned, the site could reasonably be expected to have economic value, and therefore, could be developed as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions of approval and other code required development standards should minimize impact to nearby property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would provide additional sports training opportunities in southwestern Wichita. Denial would leave the applicant with a 100 by 120-foot metal building that can only be used for agricultural and SF-5 uses.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide depicts the site as appropriate for “urban residential” uses. The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. Elementary and middle school facilities, churches, playgrounds, parks and similar residential-serving uses may also be found in this category. Recreation activities portion of the request are consistent with the playground and park uses recommended by the Plan.
6. Impact of the proposed development on community facilities: The property owner will need to address the sanitary sewer solution. Existing facilities are in place to accommodate approved uses.

DALE MILLER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, **MCKAY** seconded the motion, and it carried (9-0).



**INTEROFFICE
MEMORANDUM**

TO: MAPC
FROM: Case Bell, Community Liaison
SUBJECT: PUD2014-00001: Creation of a Planned Unit Development

DATE: 6-2-2014

Jess McNeely of the Planning Department reported on the proposed Planned Unit Development (PUD) located on the east side of South Meridian Avenue, 1,700 feet south of West MacArthur Road (4200 South Meridian). The application area is zoned SF-5 Single-family Residential (SF-5) and contains 14.74 acres. The property has recently been developed with a 100 by 120-foot (12,000 square feet) metal agricultural building. The applicants request approval of Planned Unit Development (PUD #42) 2014-00001 to permit: all uses permitted by right in the SF-5 district, "recreation and entertainment, indoor," "recreation and entertainment, outdoor," "event center in the City" and "auditorium or stadium." Verbally, the applicant's agent has indicated the applicant would probably not have more than three outside baseball/softball fields and one soccer field.

The applicant indicates that he proposes to convert the 12,000 square-foot agricultural building to an "inside recreation facility for the local school athletes to use." The applicant further indicates that the proposed facility is not intended to compete with other athletic facilities, such as the nearby Southwest Boys Club facilities, whose main focus is league play. The proposed facility is intended to be a training facility. The proposed zoning (recreation and entertainment, indoor) would allow the conversion of the site's existing agricultural building to a year-round training facility. If the request is approved the applicant indicates the existing building would be converted immediately. Outdoor recreation and entertainment uses would be installed over the next few years.

DAB? Is there residential nearby? **A:** North and South there is SF5 zoning, but there are setbacks built in.
DAB? There used to be flooding issues in the area, has there been anything done about that? **A:** Hasn't been discussed as far as he knows.

The homeowner commented that he was concerned about drainage. The building was built lower than curb height so they dug a ditch to the north that now is a mosquito nest. He is also concerned about lights. **Greg Ferris** representing the owner of the property being discussed reported that the facility is for indoor training and working to get kids off the streets. Conditions require no lighting shines off of the field.

DAB? Are they plan any future buildings? **A:** Not really, he wants to focus on outdoor facilities.

DAB? How much hard surface parking? **A:** Initially none (except for the required handicapped space).

DAB? Does the property owner know there's an issue with drainage? **A:** Yes he is aware of it.

The DAB IV members voted 9-0 to recommend approval of the request subject to the fourteen listed conditions.

City of Wichita
City Council Meeting
July 8, 2014

TO: Mayor and City Council

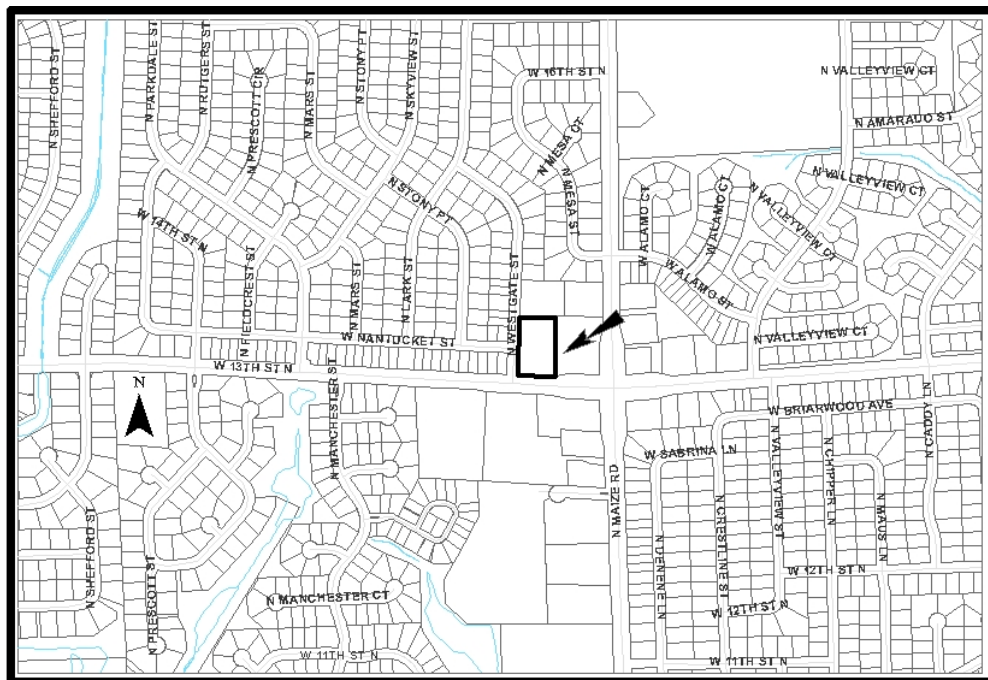
SUBJECT: SUB2014-00023 -- Plat of Westgate Village 3rd Addition located on the North Side of 13th Street North, West of Maize Road (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (9-0)



Background: The site consists of one lot on 1.63 acres and is zoned LC Limited Commercial.

Analysis: Water and sewer services are available to serve the site. The applicant has provided a Drive Approach and Sidewalk Certificate regarding the driveways required to be closed by access controls and for construction of a sidewalk along Westgate. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance responsibilities of the reserves being platted.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Legal Considerations: The Law Department has reviewed and approved the Drive Approach and Sidewalk Certificate and Restrictive Covenant as to form and the documents will be recorded by the applicant with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat and authorize the necessary signatures.

Attachments: Drive Approach and Sidewalk Certificate.
Restrictive Covenant.

DRIVE APPROACH & SIDEWALK CERTIFICATE

Credit Union of America, the owner of Lot 1, Block 1, Westgate Village Third Addition, an addition to Wichita, Sedgwick County, Kansas, is in the process of re-platting said property, and does hereby acknowledge that in accordance with the requirements of the re-platting process as set forth by the City of Wichita, that a certain existing drive not within the platted full movement openings designated on the face of the plat along 13th Street be closed as part of the redevelopment process. Also as a part of said re-platting process, it was determined that per the Subdivision Regulations a sidewalk is required to be installed along the west line of said Lot 1.

This is to place on notice the owner of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such sidewalk is installed and such drive approach is removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such installations and closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 13th day of June, 2014.

CREDIT UNION OF AMERICA

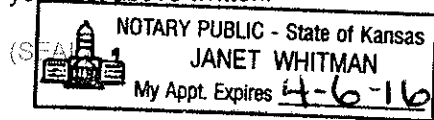
By: 
Bob Thurman, President

ATTEST:

STATE OF KANSAS) SS
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this 13th day of June, 2014, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Bob Thurman, President, Credit Union of America, to me personally known to be the person who executed the foregoing instrument, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.



Notary Public Janet Whitman

My Appointment Expires: 4-6-16

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

RESTRICTIVE COVENANT

This covenant, executed this 13th day of June, 2014.

W I T N E S S E T H: That,

WHEREAS, the undersigned is in the process of platting that certain real property to be known as Westgate Village Third Addition, an addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, as a part of the platting process certain requirements have been made by The City of Wichita regarding ownership and maintenance of reserves, the establishment of an owners association, and providing for the maintenance of drainage reserves being platted.

NOW, THEREFORE, the undersigned does hereby subject Westgate Village Third Addition, an addition to Wichita, Sedgwick County, Kansas, to have the following covenants and restrictions.

1. At such time as the property shall become developed by erection of improvements thereon the undersigned, or its successor or assigns agrees to directly provide, or cause an association to be formed to provide for the care, maintenance and upkeep of the reserves, and the common areas.
2. The reserves located in said Addition will be conveyed to the association at such time as the project is sold to or occupied by more than one owners.
3. Until said reserves are so conveyed, the ownership and maintenance of the reserves shall be by the undersigned, or its successor or assigns.
4. The owners of the reserves shall bear the cost of any repair or replacement of improvements within said reserves resulting from street construction, repair or maintenance.
5. The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.
6. In the event that the Undersigned, or its successor or assigns or the association, its' successors or assigns, shall fail at any time to maintain the Reserves dedicated for Drainage or fail in any manner to fulfill their obligation relating to the Reserves dedicated for Drainage, City of Wichita may serve a written Notice of Delinquency upon the Undersigned, or its successor or assigns or the Association setting forth the manner in which the Undersigned, or its successor or assigns or the Association has failed to fulfill its' obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Undersigned, or its successor or assigns or the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the Reserves dedicated for Drainage from becoming a nuisance, may enter upon said Reserves dedicated for Drainage and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of

Wichita in carrying out the obligations of the Undersigned or the Association may be assessed against the Reserves in the same manner as provided by law for such assessments and said assessments may be established as liens upon said Reserves. Should the Undersigned or the Association, its successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty-day period to be provided in said Notice, apply for a hearing before the City Council to appeal said assessments, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

This covenant runs with the land and is binding on future owners and assigns.

IN WITNESS WHEREOF THIS covenant has been executed by the undersigned as its act and deed upon this 13th day of June, 2014.

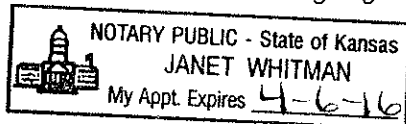
CREDIT UNION OF AMERICA

By: Bob Thurman
Bob Thurman, President

STATE OF KANSAS) SS
SEDGWICK COUNTY)

Be it remembered that on this 13th day of June, 2014, before me, a notary public in and for said County and State, came Bob Thurman, President, Credit Union of America, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledge the execution of same.

(SEAL)



Janet Whitman
Notary Public

My Appointment Expires: 4-6-16

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas